

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

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STATE OF ARIZONA,)

Plaintiff,)

vs.)

Case No. V1300CR201080049

JAMES ARTHUR RAY,)

Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY FORTY-SEVEN

MAY 27, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

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4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs.) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant.)
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1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Friday, May 27,
3 2011, at Yavapai County Superior Court, Division
4 Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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PROCEEDINGS

(Proceedings continued outside presence of jury.)

THE COURT: The record will show the presence of Mr. Ray, the attorneys.

I wanted to talk about two matters -- scheduling and then also the three exhibits that were submitted right before the break, the long break -- exhibits 1018, 1019 and 1020. They're in redacted form. I have never spoken with the attorneys after the state has presented them in this fashion.

Mr. Kelly.

MR. KELLY: May I approach?

THE COURT: Of course.

MR. KELLY: I just don't remember. These were the exhibits that we submitted at your discretion before the several-day break.

THE COURT: I guess they were at my discretion. But I never heard from the attorneys. Ms. Rybar brought them to me.

MR. KELLY: We were submitting them based on our prior oral arguments and leaving it to your decision. Now I understand.

THE COURT: I'm sorry, Mr. Kelly. I didn't

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mean to interrupt. But there has been some information taken out. So I really need to know if you have any objection to the form that they're in now. I think what the state removed was any reference to refund policy. I believe that's removed and some other things. That's what I noticed is no longer appearing.

MR. KELLY: Judge, again simply reinstate our prior argument, which was actually briefed. And I'm using 1019 as an example. On the first page it has a package, the Modern Magick package, with some dollar amounts. The investment is 17,000, et cetera.

Our position was that that type of marketing information was irrelevant. We thought based on the pretrial ruling that that type of information was not going to be admitted, that the sole dollar amounts were the \$10,000 for the 2009 seminar.

There is some other -- Mr. Li is showing me Kirby Brown and Virginia Brown's receipt for what she paid. The 9,596 would be consistent with what we understood your ruling to be. Urban shaman, sacred energy exchange, with dollar amounts. That was the basis of our objection. I

believe that was briefed in writing.

And our position before the break was we were going to submit it on those arguments, Judge.

THE COURT: Well, there is a new form of exhibit now, Ms. Polk?

MS. POLK: Your Honor, the state has redacted everything the Court ruled would not be admissible. The Court said what was paid for other events is admissible. And we've done our best to put these exhibits in a form that would be acceptable to the Court.

Counsel has stipulated to the authenticity of the signatures. And we've raised the foundation otherwise. And I would submit they are admissible.

THE COURT: Okay. What I have indicated would be admissible would be amounts paid for JRI events. There is additional information on there. So the defense will need to provide what they believe. I'll need to have a comparison. Because that's what's admissible is what was paid for various events by these people.

And there is information beyond that apparently. I want to know what the defense -- I don't want to just have an abstract discussion

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about what might go beyond my ruling. And the ruling was expanded somewhat at trial.

Originally it was going to be the cost. What I dealt with at the time when the issue was raised months ago was the cost of the actual Spiritual Warrior seminar. And I indicated that there would also be the amounts that were paid for other JRI events.

So, Mr. Kelly, I need to have a form, and then we can talk about it in concrete terms.

MR. KELLY: Judge, what we're doing is asking for a copy. We'll identify those portions of the exhibits on the copy we'd ask be further redacted.

MS. POLK: Your Honor, we've already provided a copy of what we've redacted. We provided to counsel a copy of what the Court has seen.

THE COURT: And, Mr. Kelly, you have the originals now that can be copied as well. Just make sure --

MR. KELLY: I thought what you were asking us to do was redact the language we found objectionable.

THE COURT: Right. That's what I'd like. And obviously not on the ones that are marked that you have been given here. So --

1 And the other thing I wanted to talk
2 about was scheduling. And really thinking about it
3 and listening to the day of testimony yesterday,
4 it's really getting to a point where there is
5 cumulative testimony. And I would expect these
6 other witnesses would move along fairly rapidly.

7 That's my observation, Ms. Polk,
8 Mr. Kelly.

9 MS. POLK: Your Honor, I agree that the
10 remaining witnesses will move along. Each
11 remaining witness that we've identified has
12 something in addition to add. And I don't intend
13 to spend time going over the previous events.

14 The state -- one more matter. The state
15 does intend, if the Court permits, to recall Fawn
16 Foster. As the Court will recall, she was subject
17 to recall subject to the -- her testimony about
18 participating in a sweat lodge ceremony in that
19 same structure.

20 Fawn participated in a ceremony in
21 October 2008 less than a month after the September
22 Spiritual Warrior 2008 event. And this continues
23 to be very relevant to the issue of causation.

24 What the Court had ruled before was until
25 the state had established that the sweat lodge was

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1 the same or, essentially, the same and until we had
2 made that medical link that Fawn Foster would not
3 be permitted to testify.

4 We clearly have made the medical link,
5 the expert testimony that the Court was looking
6 for. And we clearly have established that the
7 sweat lodge that was used in October of 2008 is,
8 essentially, the same as the one used in September
9 of 2008.

10 And this is directly relevant to the
11 issue of causation. Specifically, the pit is in
12 the same place. We've heard testimony that that
13 pit, once it was dug, that's where it stayed.

14 The kiva that's used in 2008 is the same
15 kiva that was used in 2009. It was built in 2008,
16 and it remained in that same place through the
17 ceremonies in 2008 and 2009.

18 And so the position of the pit inside the
19 structure is identical because the kiva is planted
20 in the ground and the pit, of course, is planted in
21 the ground. Those two are identical.

22 The coverings. The testimony has been
23 that the coverings are, essentially, the same.
24 They're not put on in the same order every time.
25 But the same coverings are used. And if a blanket

1 is damaged, it would be removed. Or if a tarp is
2 damaged, perhaps a new tarp might be brought in.

3 There is no testimony indicating what
4 happened from September to October 2008, but, I
5 think, reasonable minds can infer that,
6 essentially, the same coverings are used between
7 the two events.

8 The issue of air circulation, then. The
9 defense has raised that as an issue. And what the
10 evidence has shown is that the air circulation
11 inside that structure is going to be similar
12 because it's the same structure, it's the same
13 kiva, it's the same coverings, it's the same one
14 opening, and it's the same location of the pit.

15 The defense has now raised the
16 possibility that it was the dirt that participants
17 were lying on, making Fawn Foster's testimony
18 even -- to the issue of causation even more
19 relevant.

20 This is the same dirt separated by less
21 than a month in time that was used for
22 Mr. Ray's 2008 events and then a month later when
23 Fawn Foster participates in another ceremony.

24 Fawn Foster's testimony will be very
25 brief, simply talking about her participation in

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1 September 2008 in a sweat lodge ceremony and,
2 again, to the issue of causation -- the pit, the
3 kiva, exactly the same; the coverings, essentially,
4 the same. And the issues of the dirt, issues of
5 air circulation, whatever other issues are relevant
6 to the issue of causation, which, again, is the
7 issue raised, all become very important through the
8 testimony of Fawn Foster. Her testimony will be
9 very brief, Your Honor.

10 The state would -- I haven't heard from
11 Mr. Kelly how long he believes he would be
12 cross-examining Mark Rock today. But if he
13 finishes in time, then the state would intend to
14 bring Fawn Foster this afternoon if she's
15 available.

16 THE COURT: What I recalled from Fawn Foster
17 and the issue with her had to do with her being in
18 a sweat lodge herself. That's what I recall. And
19 she had some confusion about the dates when she was
20 in it. That's what I recall as being the reason
21 possibly to recall.

22 And I didn't quite catch that, Ms. Polk.
23 From what you were indicating, you were talking
24 about the 2008 JRI event.

25 MS. POLK: Your Honor, I'm talking about Fawn

1 Foster's participation in another sweat lodge
 2 ceremony a month later. What I recall at the time
 3 was Mr. Kelly objecting to her testimony because --
 4 arguing that we couldn't establish that it was,
 5 essentially, the same sweat lodge structure that
 6 Mr. Ray was using. And it was subject to that
 7 showing that the Court allowed us to not have her
 8 testify at the time but subject to that showing
 9 that we could recall her.

10 THE COURT: What I wanted to clear up is it
 11 wouldn't be your intention to go through 2008,
 12 October 2008, whenever -- whenever the Spiritual
 13 Warrior 2008 occurred. That's not what you want to
 14 do. Okay.

15 MS. POLK: Correct.

16 THE COURT: Mr. Kelly or Mr. Li.

17 MR. KELLY: Judge, this is simply wrong. I
 18 don't know how else to state it. If I understand
 19 the government's position, they're going to bring a
 20 lay witness who said I had another experience in a
 21 sweat lodge that apparently the same coverings,
 22 wood and location of the rock pit. That same lay
 23 witness was never inside of the 2009 sweat lodge.

24 And then they're going to make some type
 25 of comparison as to causation of death in 2009?

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1 That's what I understand the proffer to be.

2 THE COURT: It's back to that whole issue of
 3 is there validity to what I call the "common-sense
 4 analysis." I understand you may disagree with it.
 5 The argument from the state's view, a common-sense
 6 analysis of you have, basically, the same
 7 structure, the same kiva. The pit is in the same
 8 place. You have substantial similarity between
 9 materials, and no one is -- just simplify the
 10 argument. No one is poisoned. Is that a valid
 11 proposition? And that's what we talked about a
 12 lot.

13 MR. KELLY: I would state, Judge, in the most
 14 basic analysis, most simple analysis, if Fawn
 15 Foster becomes the human thermometer to make those
 16 assessments and her physiological response to the
 17 two different environments, then would it not be
 18 necessary that she be a participant in 2009? So
 19 what she's going to do is provide an opinion, oh.
 20 I was in a sweat lodge in '08.

21 Now, I'm not conceding in any respect
 22 that there are numerous variables that could affect
 23 the well being of participants throughout the
 24 course of the use of this entire sweat lodge
 25 throughout a several-year time period.

1 Because what is unknown is the
 2 application of pesticides, as an example, between
 3 the date that Fawn Foster participated in her 2008
 4 sweat lodge and the 2009.

5 But ignoring all of those other
 6 arguments, how does that relate to causation that
 7 if you have a participant in another sweat lodge
 8 who is not a participant in the sweat lodge where
 9 the indictment has been alleged? I can't see that.

10 What we have is just simply Fawn Foster,
 11 who we've identified through cross-examination,
 12 motive and bias in regards to her testimony, her
 13 dislike for James Ray International and James Ray.
 14 She's the one that said, I don't believe that
 15 anyone should profit from a sweat lodge.

16 So we have one witness who is outside
 17 of 2009 who is going to take the witness stand as a
 18 layperson and make the comparison purportedly to
 19 establish causation.

20 And the causation is heat stroke. And,
 21 again, this continuum of heat stroke is a
 22 physiological response to an environmental stress
 23 dependent upon the individual and not a response of
 24 multitude of different sweat lodge's over a period
 25 of time. You have to assess the individual if

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1 you're going to use prior experiences.

2 So, again, Judge, I believe this is just
 3 absolutely improper. Finally, what I would add is
 4 it's news to us. We come here this morning. We
 5 established what they thought the remaining
 6 witnesses in this trial were, and this was sprung
 7 on us.

8 And it begs the question from a simple
 9 due-process standpoint, could we as a defense team
 10 allow Fawn Foster to offer this evidence without
 11 additional investigation and inquiry on our part as
 12 to the credibility of her testimony, as to whether
 13 other participants in her sweat lodge event would
 14 draw the same conclusions, before we can adequately
 15 represent Mr. Ray? That's a basic defense
 16 preparation requirement.

17 And it's not been disclosed. We had no
 18 idea that Fawn Foster was going to take the stand
 19 and testify at this late date in this trial about a
 20 completely different sweat lodge.

21 And, again, Judge, I just add on this
 22 myriad of other variables in terms of personal
 23 knowledge. She has no personal knowledge as to the
 24 application of pesticides, herbicides, whether the
 25 dirt is changed. She didn't build the sweat lodge.

1 There is just a multitude of factors that she has
2 no personal knowledge upon which she could draw a
3 conclusion regarding causation.

4 I would submit, Judge, it's highly
5 improper. And if the Court is going to allow
6 Ms. Foster to testify, then we need some time as a
7 defense team to consult and make decisions. We
8 also need disclosure as to the time date,
9 participants in the other sweat lodge.

10 THE COURT: Mr. Kelly, this was discussed
11 before, I believe. I had concerns. And it's just
12 not a clear issue. I had concerns about the logic,
13 the legal logic, of this common-sense argument, if
14 it doesn't cross over into something that's really
15 within the purview of expert expertise.

16 MR. KELLY: And, Judge --

17 THE COURT: I'm just saying it's not a
18 surprise. That's what I'm saying, in my view. I
19 don't think that's the issue. Because we had --
20 either here or at the bench or at a break, we
21 talked at some length about is there -- at some
22 point is there enough expert testimony? Is there
23 adequate expert testimony to make these lay
24 observations relevant? Do you need to have expert
25 testimony, or can you look at comparisons at

1 what -- here's, essentially, the same materials and
2 structure used. And something happens that's
3 arguably on the continuum of heat illness if it's a
4 JRI event and not happening when there are other
5 events.

6 I at one point said in the record -- I
7 used the term "identical." I think it was at the
8 bench here. There are very few things that are
9 identical. And that probably would be a higher
10 standard than would be required. But I said that.
11 And Ms. Polk raised her argument now in terms of
12 substantial or similarity or something like that.

13 But, Mr. Kelly.

14 MR. KELLY: Judge, again, forgive me. Here's
15 what I recall the history of prior sweat lodges
16 from JRI to be: The state asserted admissibility
17 under 404, which was denied by the Court. They
18 then asserted admissibility under a theory that the
19 lesser included of negligent homicide. And they
20 were referring to the final sentence of your ruling
21 related to 404(b) where you said it may be
22 admissible in that regard.

23 That was briefed. They lost that. You
24 mentioned from the bench perhaps causation. So for
25 the last two months or so, the state has now

1 asserted that these other events are admissible
2 under a theory of causation.

3 Now, remind the Court that Dr. Mosley
4 said it would be dangerous -- those are were his
5 words -- to make comparison of earlier events.

6 THE COURT: He said that in an interview.

7 MR. KELLY: Correct. And I believe -- he
8 didn't say it on the witness stand because that
9 door wasn't opened. But he did say that. And we
10 can avow to the Court that transcript that the
11 Court has is true. The reason that's relevant is
12 we have an expert who says it's dangerous to go
13 down this path.

14 Now, when it comes to Fawn Foster and
15 completely separate sweat lodge events, what I
16 recall the Court saying is -- and I believe it was
17 one of my witnesses -- admonishing Ms. Polk and
18 saying how could a comparison to a nonJRI event be
19 relevant in this case?

20 So in regards to notice that we had, we
21 didn't have any notice of this before the beginning
22 of the jury trial. The notice that we had was that
23 they were going to try to admit prior JRI events
24 under 404, then during trial under a lesser
25 included offense theory, and then about midway

1 through trial through a causation theory.

2 And then now today we hear of a
3 completely separate nonJRI event. And what I
4 recall, Judge -- and, of course, the record speaks
5 for itself -- it was at a sidebar where you posed
6 the question to Ms. Polk. And it may have been
7 Ms. Foster's testimony. How could a nonJRI event,
8 how could a comparison have any relevance to any
9 issue relating to manslaughter in October of '09?

10 So that's what I recall the sequence.
11 And when I talk about the ability to represent
12 Mr. Ray, we are surprised by this information. And
13 in order to provide an adequate defense, we would
14 need to know the other participants in the nonJRI
15 event so that we can interview those people to
16 assess the credibility of Ms. Foster's testimony
17 versus just putting her on the stand and letting
18 her talk about what she wants to talk about. It's
19 a problem.

20 THE COURT: I really don't like to interrupt.
21 But sometimes I hear something in an argument, and
22 I'm thinking about that, and I have to listen to
23 the rest. Quite early on in your last argument,
24 Mr. Kelly, you said something about the Court
25 suggesting causation. I don't think I suggested

1 causation at all. I recall Ms. Polk after the
2 first part of Mr. Li's opening coming in -- and
3 remember Mr. Li's open was split between two days.
4 It resumed the following morning. Ms. Polk raised
5 the argument of causation. That's my recollection.
6 And, Mr. Kelly, I didn't suggest causation.
7 Ms. Polk suggested causation, and I found that to
8 be an appropriate argument.

9 MR. KELLY: I'm not trying to mislead the
10 Court. So my recollection is different. And I
11 apologize if it was wrong.

12 THE COURT: Mr. Li, I don't think I suggested
13 causation.

14 MR. LI: I just don't recall.

15 THE COURT: That's important to me. Please,
16 Mr. Li. I want to clear that up.

17 Ms. Polk, didn't you raise causation?

18 MS. POLK: I did, Your Honor. And it was
19 after Mr. Li in his opening talked about
20 organophosphates and other possible -- excuse me --
21 causes of death. Then I came in the next day and
22 made my argument to the Court. I agree with your
23 recollection.

24 THE COURT: Okay.

25 MR. LI: I'm not here to argue about that. We

1 actually have the transcript. We can look at it
2 and tell The Court what we recall. I do recall
3 Ms. Polk bringing the issue of causation up, and I
4 just don't recall whether the Court had mentioned
5 it or whether Ms. Polk had mentioned it first.

6 So -- you know -- I don't purport to
7 make -- and I'm not sure that that matters for
8 purposes of this particular decision.

9 I think the real issue here is there are
10 a myriad of factors that could be different between
11 when Fawn Foster experienced the sweat lodge and
12 what we thought was May 2009, according to some of
13 the testimony and according to what we understood
14 the state was alleging.

15 We now hear it's October 2008 when the
16 sweat lodge took place. We have no idea what
17 happened between October 8, 2008, and October 8,
18 2009. And we've established it through Ted Mercer
19 repeatedly that he has no idea who was treating the
20 land, whether anything was done to the tarps.

21 And our theory isn't that -- the whole
22 point of the possibility that an insecticide was
23 applied is not that there is some inherent problem
24 with the tarps themselves at any given moment.
25 It's that somebody may have applied something to

1 them. And that is obviously defined by some
2 particular time frame.

3 And so the idea that Ms. Foster can
4 testify about her particular experiences in an
5 unrelated sweat lodge with an unrelated facilitator
6 with different numbers of rounds, all of those
7 sorts of things, seems to be me a very far stretch.

8 And the only point Mr. Kelly is making
9 about the notice issue is simply this: There might
10 be somebody out there who participated in the same
11 sweat lodge as Fawn Foster who would come in here
12 and say that was the most miserable experience in
13 my life, give the sort of nonmedical diagnosis as
14 we've heard from some other witnesses -- that I
15 threw up. I felt nauseated. I had a headache.
16 All of those sort of things.

17 There might be some witness who would
18 testify to that. We just don't know. We don't
19 have a list of the participants in Fawn Foster's
20 particular -- whatever she wants to testify about.

21 And the point we're making here,
22 Your Honor, is that it's a very, very attenuated
23 logical leap to say that her testimony is relevant
24 to the causation in 2009 at the Spiritual Warrior
25 seminar. And we simply don't have a way of testing

1 the veracity of what she says.

2 And just by way of example, one of the
3 witnesses who was interviewed, who was the general
4 manager at Angel Valley, a guy named Gary Palish,
5 the Court has heard of, has told the state that
6 other people have thrown up at other events, that
7 he himself has thrown up at other events, nonJRI
8 events.

9 THE COURT: I understand.

10 MR. LI: And so -- you know -- the idea that
11 she can get up there and almost as a lay witness
12 suggest there is some standard -- you know --
13 standard of care for sweat lodge conduct under the
14 guise of some sort of causation argument is highly
15 problematic. And I'm sorry, Your Honor. I don't
16 mean to --

17 THE COURT: We've been through this so much.
18 This isn't a new argument today from either side.

19 MR. LI: Understood, Your Honor. But we show
20 up this morning having heard from the state
21 yesterday that the witnesses are as outlined by
22 Mr. Kelly, yesterday on the record in front of the
23 Court, and the state saying yes. That is what the
24 situation is.

25 And then this morning we're told at

1 9:00 o'clock that they intend to call Fawn Foster.
 2 This strikes us very much like the afternoon before
 3 the break where all of a sudden Ms. Brown was going
 4 to be called to testify.

5 And it makes the our ability to
 6 present -- it makes our ability to present the
 7 defense difficult because it's a constant -- you
 8 know -- adjustment to last-minute decisions on the
 9 part of the state.

10 We asked yesterday on the record whether
 11 there was anyone else. I think the Court asked
 12 Ms. Polk is that correct as to the list of
 13 witnesses that Mr. Kelly laid out? And Ms. Polk
 14 said, yes.

15 And that's the problem, that we're
 16 dealing with things at 9:15, 9:25, with the jury
 17 waiting, arguing issues that have been argued
 18 before that we could have dealt with in a more
 19 orderly fashion.

20 THE COURT: This gets back to the question of
 21 pattern. And the defense is always raising
 22 objection whenever that word has come up --
 23 "pattern." There is two ways that word can be
 24 looked at.

25 And I think sometimes, Mr. Hughes and

1 Ms. Polk, the state has argued pattern and manner
 2 that suggests propensity. And in that sense that's
 3 a problem.

4 There is another sense where it's just a
 5 fact that things happen here, not there. And it
 6 can be looked at as mechanical, physical, medical,
 7 in some aspects scientific causation and it doesn't
 8 relate to pattern in terms of a character trait
 9 that's repeated or manifested repeatedly.

10 I'm not going to permit in the state's
 11 case in chief Fawn Foster's testimony because it's
 12 cumulative. Based on that pattern discussion I
 13 just had, it's just absolutely cumulative to the
 14 testimony that's already been presented.

15 If there is any separation in time; if
 16 it's a month between the two sweat lodges, the JRI
 17 versus the nonJRI; if it's four months; if there is
 18 an application of something to the coverings, then
 19 what does that mean?

20 Ms. Polk, obviously you felt you should
 21 have been able to reply, so go ahead. To me it
 22 just seems cumulative to what's been admitted.
 23 There has been repeated testimony about contrast.
 24 Mr. Kelly was cross-examining Ms. Foster. I think
 25 it was Ms. Foster just indicated there might be

1 different views of what's to be accomplished here,
 2 something like that. I think it was Ms. Foster
 3 that that came out. That testimony has been out
 4 here, and it's nothing but repeating it, in my
 5 view, Ms. Polk.

6 MS. POLK: Your Honor, first of all, much of
 7 those arguments go to weight, not admissibility.
 8 The issue that perhaps something was applied to the
 9 surface between Fawn Foster's experience in 2009
 10 would go weight, not admissibility.

11 But, secondly, I don't see it as
 12 cumulative. We haven't had anybody from the
 13 October 2008 event that Fawn Foster participated in
 14 testify. To me it's directly on point, directly
 15 relevant on this issue of causation. Because the
 16 defense now, yesterday again, through the
 17 cross-examination of Brandy Rainey, started asking
 18 her about the defective sweat lodge construction
 19 and the lack of air circulation and suggesting that
 20 it was the sweat lodge itself that somehow caused
 21 the deaths. They continue to raise this issue.

22 This is a witness who was in that same
 23 structure, same kiva, same pit location, same issue
 24 of air circulation, single door, similar coverings,
 25 one month after Mr. Ray's 2008 event where people

1 got sick. And she will talk about her experience.

2 Nobody has talked about what happened in
 3 the October 2008 sweat lodge ceremony less than a
 4 month after Mr. Ray's event where people get sick.
 5 We haven't had a single witness talk about what
 6 happened in 2008 from the inside.

7 The Mercers were allowed to testify that
 8 for all of the ceremonies that they were on the
 9 property for in 2007 through 2009, the only time
 10 there were issues were with Mr. Ray's events.

11 But this is a witness who will talk about
 12 what happened less than a month after what Mr. Rock
 13 just talked about. So it's not cumulative. We
 14 haven't had any other witness who was inside that
 15 same structure on a different event, at a nonJRI
 16 event, testify. She's a unique witness who has
 17 information to talk about causation.

18 That is an issue in this trial. And it
 19 makes more relevant than not that it is the way
 20 Mr. Ray conducts his ceremonies that causes the
 21 death. And that's an issue. That is a fact that
 22 is an issue in this trial.

23 THE COURT: Ms. Polk, as I recall, Ms. Foster
 24 originally couldn't even remember what year it was.
 25 So, for example, you're saying now what month was

1 this other sweat lodge?

2 MS. POLK: This is October 2008. And she
3 does -- she will -- Your Honor, as you will recall,
4 she at first couldn't remember and then did
5 remember that it was the fall of 2008. And at that
6 point we were cut off.

7 THE COURT: I don't remember that at all. I
8 remember it still being very much up in the air.
9 When this actually happened, she wasn't sure.

10 It is cumulative in this sense: She's
11 already testified about all these other sweat
12 lodges she's observed and never seeing any kind of
13 an issue. And now just wants to be with regard to
14 her own experience in the sweat lodge --

15 How many people were in the sweat lodge,
16 Ms. Polk?

17 MS. POLK: I can find it for the Court.
18 Your Honor, there is an exhibit, Exhibit 838. It
19 is the history of the sweat lodges at Angel Valley.
20 That was disclosed. It's marked as an exhibit.
21 And if you will give me a moment, I can answer that
22 question for you.

23 THE COURT: Tom Kelly and Luis Li are
24 indicating, Sheila Polk, that it's 10:00.

25 MS. POLK: It is, Your Honor. But, again,

30

1 that's the sort of information that goes to the
2 weight, not its admissibility. I don't see it as
3 cumulative, Your Honor, and I do see it as
4 relevant. It will assist the trier of fact, the
5 jury, in determining an issue -- a fact that's at
6 issue in this trial. And that's the issue of
7 causation.

8 To continue to argue, as the defense has,
9 that it is something other than heat, that it's the
10 dirt that people were lying on, that it's the lack
11 of air circulation, it's the off-center pit,
12 clearly what's relevant, then, is what happens
13 within that same sweat lodge when somebody other
14 than Mr. Ray is running the ceremony.

15 It helps the jury determine. It makes it
16 more possible, more relevant, more likely than not,
17 that it's Mr. Ray's conduct as opposed to
18 pesticides, or whatever the theory is that the
19 defense would be arguing, to hear that people
20 conduct sweat lodge ceremonies in that same
21 structure without people getting sick.

22 And this one is particularly relevant
23 because it comes less than a month after the
24 September 2008 Spiritual Warrior event. So less
25 than a month later there is a ceremony. And, as

1 Ms. Foster will testify to, nobody gets sick.

2 THE COURT: How many rounds?

3 MS. POLK: Your Honor. I believe she'll say
4 it's four. But, again, those are questions that go
5 to the weight, not to its admissibility. Those
6 would all be appropriate topics for
7 cross-examination, trying to point out the
8 differences.

9 To me it is relevant the number of
10 rounds, the number of people. That goes to
11 Mr. Ray's conduct. It's not just heat. It's how
12 he conducts that sweat lodge ceremony that causes
13 people to die. It's the number of people that he
14 puts in there. It's the amount of rocks that he
15 brings in. It's the amount of water, the amount of
16 steam that he creates. It's the length. It's the
17 number of rocks. It's the exposure. How -- the
18 length of time that Mr. Ray exposes his
19 participants to that heat, that's what causes the
20 deaths.

21 And that's where it's relevant for the
22 jury to hear other people safely conduct sweat
23 lodge ceremonies in that same sweat lodge without
24 incident. And the reason will be the conduct.
25 Because other people conduct a ceremony with fewer

32

1 people, fewer rocks, much less steam, and much less
2 duration. Those are the comparisons that the jury
3 as the finder of fact, then, will draw in
4 determining, well, what caused the death?

5 And ultimately what the state is arguing
6 is it's Mr. Ray's conduct that causes the death.
7 It's his conduct in exposing his participants to
8 heat, steam, and duration that causes people to
9 die.

10 THE COURT: We're just going over the same
11 arguments. And I'm not going to take any more jury
12 time on this.

13 Ms. Polk, you replied. And when I hear
14 that, I'm thinking -- you say this is all a matter
15 of common sense. You have 10 people versus
16 50-some. What's the difference in the temperature?
17 You're saying that's all a matter of weight. And
18 what you already have is testimony that repeated
19 observations of what happens between the two groups
20 of sweat lodge participants.

21 MS. POLK: Again, Your Honor, the issues that
22 would go to weight. That would be an area for the
23 defense to cross-examine to try to suggest well --
24 actually, to me it's relevant. I would go there
25 that -- because it's the conduct. It clearly is

1 the conduct.

2 And those contrast, then, how you can
3 safely conduct a sweat lodge ceremony in that same
4 structure versus the extreme nature of Mr. Ray's
5 that causes people to die.

6 THE COURT: Ms. Polk, what you're saying is
7 that it's possible to conduct a sweat lodge where
8 these things don't happen. There is just -- for
9 whatever reason. That's what you're saying.
10 You're going to have somebody up here, another
11 witness, that goes through this personal experience
12 in another year to, basically, talk about what's
13 already been presented extensively in court.

14 MS. POLK: Again, we've had nobody from inside
15 that structure on another occasion testify. So it
16 is unique. And, again, the issue is not that it's
17 possible. The issue is that the defense is saying
18 somehow it's the tarps, it's organophosphates, it's
19 something that was in the ground.

20 And here is somebody who was inside on
21 that ground in the sweat lodge. And she will talk
22 about the fact that she didn't get sick and other
23 people don't get sick. To me it's extremely
24 relevant to this issue of causation.

25 THE COURT: I think it puts another person in

1 the stand to, basically, repeat what's uncontested.
2 Nobody even in 2007, 2008, in the Spiritual Warrior
3 events had direct medical care, at least as far the
4 evidence goes, that's admissible in this trial.
5 And -- I just see it as very, very repetitive.
6 But --

7 MS. POLK: I would like to address the Court's
8 concern that other people didn't get medical care.
9 The reason people didn't get medical care is
10 because Mr. Ray doesn't call 9-1-1. The Court has
11 not allowed the -- what happened in 2005 to come in
12 when 9-1-1 was called.

13 But to me it's circular to say that
14 because 9-1-1 wasn't called that somehow that's
15 relevant to whether or not testimony comes in when
16 the person in charge of the event is not calling
17 9-1-1.

18 THE COURT: Okay. Ms. Foster is not going to
19 testify today, in any event. We've really gone
20 over this. We need to start the trial.

21 (Proceedings continued in the presence of
22 jury.)

23 THE COURT: The record will reflect the
24 presence of the defendant, Mr. Ray the attorneys
25 and the jury. The witness, Mr. Rock, has returned

1 to the witness stand and is under oath, of course.

2 Ms. Polk.

3 MS. POLK: Thank you.

4 DIRECT EXAMINATION (Continued)

5 BY MS. POLK:

6 Q. Good morning, Mr. Rock.

7 A. **Good morning.**

8 Q. I'm going to show you some photographs.

9 And I just want you to look at them, first of all,
10 and let me know if you recognize them. 1064?

11 A. **Yes, I do.**

12 Q. 1067?

13 A. **Yes, I do.**

14 Q. 1059?

15 A. **Uh-huh.**

16 Q. And 1060. Do you recognize those four
17 photographs that I've just shown you?

18 A. **Yes.**

19 Q. And what do you recognize them to be?
20 Without tell me who's in them, what do you
21 recognize them to be?

22 A. **Those are photographs inside the Crystal
23 Hall at Angel Valley.**

24 Q. From the 2009 event?

25 A. **From the 2009 event as to who the people**

1 **are in these photos.**

2 MS. POLK: Your Honor, I move for the
3 admission of the following exhibits: 1067, 1059,
4 1064 and 1060.

5 MR. KELLY: Judge, I need to see a copy of the
6 proffered exhibits.

7 Judge, may I voir dire the witness?

8 THE COURT: Okay.

9 VOIR DIRE EXAMINATION

10 BY MR. KELLY:

11 Q. Mr. Rock, I'm handing you these four
12 photographs back. And let's start with the one on
13 the top.

14 Were you present when that photographs
15 was taken?

16 A. **Was I present when that was taken?**

17 Q. Yes, sir.

18 A. **I assume I was.**

19 Q. So you don't know for sure if you were
20 present?

21 A. **No. I don't know for sure.**

22 Q. And do you know what day of the week
23 during this Spiritual Warrior seminar in 2009 that
24 it was taken?

25 A. **I know that it was probably after**

1 **Tuesday, because Michael Barber didn't cut his hair**
 2 **immediately -- who is in that photograph. And he**
 3 **did later in the week.**

4 Q. So after Tuesday of the week of
 5 October 8, 2009; correct?

6 A. Right.

7 Q. And let's take a look at -- what's the
 8 next one on your stack? Going to be the same
 9 questions. Exhibit --

10 A. **It's myself and Christine Jobe.**

11 Q. 1064. The same question. Do you know
 12 the day of the week that that photograph was taken?

13 A. **What day of the week? No.**

14 Q. Yes, sir. You're certain that it was
 15 during the Spiritual Warrior event of 2009;
 16 correct?

17 A. **Absolutely. Because that's the Crystal**
 18 **Hall.**

19 Q. And so 1059. Same question. Do you know
 20 the day of the week that that photograph was taken?

21 A. **No. I don't know what day of the week.**

22 Q. Let's take a look at the last one,
 23 Mr. Rock. So 1060. Do you know the day of week it
 24 was taken?

25 A. **No. I don't know the day of the week on**

38

1 **that one either.**

2 MR. KELLY: Judge, I have no objection to 1064
 3 and 1067. I would object based on lack of
 4 foundation as to 1059 and 1060.

5 THE COURT: At this time -- can I see the
 6 photographs, please?

7 MR. KELLY: Mr. Rock has them.

8 THE COURT: Objection is overruled. 1059,
 9 -60, -61 and -67 are admitted.

10 (Exhibits 1059-1061 and 1067 admitted.)

11 THE COURT: Ms. Polk, if I could hand them to
 12 you.

13 MS. POLK: Thank you.

14 DIRECT EXAMINATION (Continued)

15 BY MS. POLK:

16 Q. Mr. Rock, what I'd like to do is publish
 17 these photographs to the jury and have you tell the
 18 jury whether you recognize the individuals in the
 19 photographs.

20 A. Okay.

21 Q. And I just put on the overhead
 22 Exhibit 1067.

23 Do you recognize the individuals in this
 24 photograph?

25 A. **That's Marta Reis and that's Michael**

1 Barber.

2 Q. And will you tell the jury what Marta
 3 Reis's role at Spiritual Warrior 2009 was.

4 A. **She was part of the music. She**
 5 **coordinated the music along with Michael Barber.**

6 Q. And Michael Barber, then, did what?

7 A. **Well, he was, like, an engineer for the**
 8 **music. He helped with the music. That was all his**
 9 **equipment because -- or rented equipment because I**
 10 **helped him unload it from his van.**

11 Q. Do you know whether he recorded much of
 12 what happened during the week?

13 A. **I had no idea whether they were recording**
 14 **or not other than a statement that James Ray made**
 15 **about Adolf Hitler and --**

16 MR. KELLY: Your Honor, objection. Ask the
 17 response be stricken from the record.

18 THE COURT: Sustained. And it's granted.
 19 Stricken.

20 Q. BY MS. POLK: Mr. Rock, I'm going to put
 21 up on the overhead Exhibit 1064 and ask you if you
 22 recognize the people in this photograph?

23 A. **That's myself, of course, and Christine**
 24 **Jobe.**

25 Q. And you both have blue T-shirts on?

40

1 A. **That's correct.**

2 Q. What does that indicate?

3 A. **As it states, we're Dream Team members**
 4 **that are assisting -- volunteers.**

5 Q. I'm going to put up on the overhead
 6 Exhibit 1059 and ask if you recognize individuals
 7 in this photograph?

8 A. **That's Barb Waters and that is Melinda**
 9 **Martin, who worked for James Ray.**

10 Q. Melinda did?

11 A. **Yes, she did.**

12 Q. What, then, was Barb Waters's role?

13 A. **Barb Waters was a Dream Team member like**
 14 **myself.**

15 Q. I just want to cover the other Dream Team
 16 members in the photographs, if we have them. I
 17 want to put up 1045. I believe we looked at it
 18 yesterday.

19 A. **Yes.**

20 Q. Do you see more Dream Team members in
 21 this photograph?

22 A. **Yes. I see Barb Waters, Christine**
 23 **Jobe -- Barb Waters, Christine Jobe, Jennifer**
 24 **Haley. I believe that's Aaron Bennett.**

25 Q. And we looked at a photograph yesterday.

1 And let me ask you first. Aaron Bennett. Was he a
 2 Dream Team member?
 3 **A. Yes.**
 4 **Q.** We looked at 1056, which is a photograph
 5 with Liz Neuman?
 6 **A. Yes.**
 7 **Q.** She was another Dream Team member.
 8 I want to put up on the overhead 1058.
 9 We looked at this photograph yesterday.
 10 Would you just remind us who is in this photograph.
 11 **A. Well, that's Megan Fredrickson. And I**
 12 **believe that to be Christine Jobe.**
 13 **Q.** And then I'm going to put up 1060 and ask
 14 you if you recognize any other staff in this
 15 photograph?
 16 **A. Staff is Josh Fredrickson right there.**
 17 **And then I don't know if she was staff, but that's**
 18 **Marta Reis way in the back.**
 19 **Q.** Are you able, Mr. Rock, looking at these
 20 photographs, to tell us what activity was going on
 21 when these photographs were taken?
 22 **A. Which activity? I don't know which**
 23 **activity it was that was going on. That was a**
 24 **common scene.**
 25 **Q.** What was a common scene?

1 **A. To see people hug each other after**
 2 **something, some particular event or some type of --**
 3 **some part of the program.**
 4 MR. KELLY: Judge, I've been handed a stack of
 5 exhibits or photographs we received this morning.
 6 I don't have the corresponding numbers marked.
 7 They've been marked by the clerk.
 8 My objection would be they're cumulative.
 9 May I approach, Judge?
 10 THE COURT: Yes.
 11 MR. KELLY: I'll leave it to the Court's
 12 discretion regarding admissibility.
 13 THE COURT: It's ordered admitting exhibits
 14 1061, 1062, 1063, 1065, 1066, and 1048.
 15 (Exhibits 1062, 1063, 1065, 1066 and 1048
 16 admitted.)
 17 **Q.** BY MS. POLK: Mr. Rock, I'm going to put
 18 up on the overhead 1048 and ask if you know who
 19 this individual is?
 20 **A. I believe that to be Taylor, James's**
 21 **personal assistant.**
 22 **Q.** Do you recall her last name?
 23 **A. Her last name? No.**
 24 **Q.** Does Butler sound familiar? Taylor
 25 Butler?

1 MR. KELLY: Objection. Leading.
 2 THE COURT: Overruled.
 3 You may answer that.
 4 THE WITNESS: I couldn't be 100 percent on the
 5 last name.
 6 **Q.** BY MS. POLK: But you're sure that's
 7 Taylor?
 8 **A. I'm sure that's Taylor. Yes.**
 9 **Q.** And then I'm going to put up on the
 10 overhead Exhibit 1065.
 11 Do you recognize this individual?
 12 **A. That's Linda Andresano.**
 13 **Q.** I'm going to put up on the overhead
 14 Exhibit 1066.
 15 Do you recognize that individual?
 16 **A. That's Kim Brinkley.**
 17 **Q.** I'm going to put up on the overhead
 18 Exhibit 1062.
 19 And, first of all, is that you in the
 20 photograph?
 21 **A. Yes. That's me right there.**
 22 **Q.** And we notice in the background there is
 23 writing on the easel?
 24 **A. Yes.**
 25 **Q.** Do you see that?

1 **A. Yes.**
 2 **Q.** Are you able to recall who it was that
 3 did that writing?
 4 **A. That was James Ray.**
 5 **Q.** And are you able to read for us what is
 6 written right there?
 7 MR. KELLY: Your Honor, objection. The
 8 exhibit speaks for itself.
 9 THE COURT: Overruled.
 10 **Q.** BY MS. POLK: Do you want me to bring the
 11 photograph itself?
 12 **A. Yes. It says, the five something of**
 13 **power. I couldn't read the one word. Qualities?**
 14 THE COURT: Sustained.
 15 THE WITNESS: It's hard to read so --
 16 **Q.** BY MS. POLK: Okay.
 17 **A. I'm sorry. I couldn't read that.**
 18 THE COURT: I'm sustaining the objection.
 19 **Q.** BY MS. POLK: I'm going to bring you
 20 Exhibit 1063 and ask if you're able to read what's
 21 written up in the corner there?
 22 MR. KELLY: Judge, I'm going to object to the
 23 form of the question.
 24 THE COURT: Sustained.
 25 MS. POLK: Your Honor, it was a yes or no.

1 Can he tell me if he can read it?
 2 THE COURT: Sustained.
 3 Q. BY MS. POLK: Were you present, Mr. Rock,
 4 for the lectures provided by Mr. Ray?
 5 A. Yes, I was.
 6 Q. And during the course of the week, did
 7 you -- in fact, I believe you testified about it
 8 yesterday, the issue of impeccability?
 9 A. I'm sorry. Could you repeat that.
 10 Q. During the course of the week, did you
 11 hear Mr. Ray use the word "impeccability"?
 12 A. Yes, I did.
 13 Q. Will you tell the jury in what context
 14 you heard Mr. Ray use the term "impeccability."
 15 MR. KELLY: Object on the basis of relevance,
 16 First Amendment.
 17 THE COURT: Sustained.
 18 MS. POLK: Your Honor, it goes to the issue
 19 inside the sweat lodge and the state of mind of
 20 participants.
 21 THE COURT: Sustained.
 22 Q. BY MS. POLK: Mr. Rock, let's talk about
 23 the sweat lodge ceremony, then, that occurred
 24 in 2009 at Spiritual Warrior.
 25 A. Okay.

1 Q. First of all, did you have a role in the
 2 sweat lodge ceremony as a Dream Team member?
 3 A. Yes. I was given the position of the
 4 keeper of the north. And I was to be in there and
 5 hold space, prayer, however you want to say it, and
 6 be there for the people that were going through
 7 their journey of shedding some of their problems
 8 they've had in their life and being born anew.
 9 Q. Prior to the actual sweat lodge ceremony,
 10 was there a briefing provided by Mr. Ray?
 11 A. Yes.
 12 Q. And what room was that provided in?
 13 A. The Crystal Hall.
 14 Q. Is the Crystal Hall the room we've seen
 15 in many of these photographs?
 16 A. Yes, it is.
 17 Q. And were you present when Mr. Ray talked
 18 to the participants about the sweat lodge?
 19 A. Yes, I was.
 20 Q. What do you recall him saying?
 21 A. I recall him speaking about we're all
 22 warriors and that it's going to be a rebirth.
 23 It's, like, the mother. The sweat lodge is, like,
 24 the mother, mother earth. And he talked about the
 25 bags, the tobacco pouches that we had put our

1 intentions into. I should say the participants
 2 did. I didn't have any. And how we were shedding
 3 and releasing those, some of the problems of our
 4 life and setting new intentions.
 5 And then he spoke of how -- as I said
 6 yesterday, how hot the sweat lodge was and how the
 7 Native Americans said that he was, like, a crazy
 8 white man that had the hottest sweat lodges. And
 9 they would shake their head about how he did it.
 10 And that -- he said that it was something
 11 you needed to push through and to be impeccable and
 12 push through any physical boundaries that may have
 13 been created while you're in the sweat lodge
 14 because it is so hot.
 15 And he also said not to worry about it if
 16 you pass out -- you know. We'll drag you out by
 17 your heels after it's over with. He said it would
 18 feel so hot your skin was burning off, that kind of
 19 thing, but that you'll make it through it. And --
 20 that's what he said pretty much.
 21 Q. And after that briefing what did you do?
 22 A. We actually broke up to go get our
 23 swimming suits on, because, of course, it's going
 24 to be hot in there, and you're not going to wear
 25 regular clothing in a sweat lodge.

1 Q. Did you do that?
 2 A. Yes, I did.
 3 Q. And did you then gather down at the area
 4 of the sweat lodge?
 5 A. Actually, after we got our suits
 6 together, some of the Dream Team members came back
 7 to the Crystal Hall, and then we went down together
 8 to the sweat lodge.
 9 Q. Do you recall who that -- you were with?
 10 A. I was with Liz Neuman.
 11 Q. And where did you meet Liz?
 12 A. In the Crystal Hall.
 13 Q. Mr. Rock, once you and Liz and others
 14 gathered at the site, what did you do?
 15 A. I was part of -- one of the people -- we
 16 had lit sage. And we were using the smoke to go
 17 around the person to purify them before they went
 18 into the sweat lodge. And I was one of the people
 19 doing that.
 20 Q. How did you know to do that?
 21 A. I had experienced it in 2008. And then I
 22 forget who it was that gave me it who had it there.
 23 I think it was Melinda Martin who had it. So I
 24 took it upon myself to do that.
 25 Q. After you helped sage the participants,

1 what did you do?

2 **A. Everybody lined up. And I had actually**
3 **gone towards the front of the line because I wanted**
4 **to get my space in the sweat lodge because I was to**
5 **be there for the people. So I wanted to make sure**
6 **nobody was sitting in my space.**

7 **Q. Before going in the sweat lodge, did you**
8 **gather around a small fire?**

9 **A. Yes. The participants did. They**
10 **gathered around the fire. And they had written**
11 **about their sexual experiences and recapitulated**
12 **over that. And they took them and threw them in**
13 **the fire. I don't remember which one because a lot**
14 **of time I was busy doing other things. But they**
15 **had thrown them in the fire. And that's what we**
16 **had done in 2008.**

17 **Q. Were you there for that? Were you part**
18 **of that circle or were you somewhere else?**

19 **A. I wasn't part of the circle. But I did**
20 **notice they were over there doing that.**

21 **Q. And then let's talk about once you got**
22 **inside -- I put up on the overhead Exhibit 414,**
23 **which is just a simple diagram. I think you saw it**
24 **yesterday.**

25 **A. Yes.**

1 **Q. Tell the jury how you entered and where**
2 **you went.**

3 **A. Well, when I entered the sweat lodge, I**
4 **came in here, came clockwise, as we were**
5 **instructed. I took my position directly north,**
6 **which I was told was due north of the door, which**
7 **was south.**

8 **Q. Do you know whether or not those**
9 **directions were actually accurate?**

10 **A. I didn't find that out until afterwards**
11 **that I was actually sitting in the west.**

12 **Q. Did people then come in after you?**

13 **A. Yes. They all filed in like they were**
14 **instructed. And they started filling out the outer**
15 **circle. James and some of his other staff members**
16 **had gone in first. And then they filed in, and**
17 **they came the second row in front of us.**

18 **Q. You mentioned Liz Neuman. Do you know**
19 **where she sat?**

20 **A. Linda Andresano?**

21 **Q. No. Liz Neuman.**

22 **A. I knew Liz Neuman as -- she was**
23 **instructed as keeper of the west, which was here.**
24 **And she was -- which was really south.**

25 **Q. And who was the keeper at this side of**

1 the sweat lodge.

2 **A. Right there was Josh Fredrickson.**

3 **Q. And Aaron Bennett. Do you know where he**
4 **was?**

5 **A. Aaron Bennett was by the door, on this**
6 **side of the door, as he was the year before. He**
7 **was the one that would take the pitchfork from the**
8 **fire keeper, and he would move the hot rock into**
9 **the pit.**

10 **Q. Did you receive any instructions about**
11 **what you should do as a Dream Team member inside**
12 **the sweat lodge?**

13 **A. I've already stated those instructions,**
14 **which was to be the keeper of the north and to hold**
15 **space or prayer or good intentions for the people**
16 **that were going through on their journey and this**
17 **event.**

18 **Q. Did you receive any instructions about**
19 **what to do if somebody fell ill?**

20 **A. No.**

21 **Q. What was your intention in terms of --**
22 **what was your intention in the sweat lodge as a**
23 **Dream Team member and the keeper of what you**
24 **believed to be the north?**

25 **A. Well, when I was in front of the sweat**

1 **lodge, I remember back that in 2008 I had not**
2 **completed the sweat lodge. And I was a little**
3 **apprehensive because I knew that it was a very**
4 **exhausting event. And so I had set my intention**
5 **that no matter what, I was going to stay in that**
6 **sweat lodge and be there for the people who I cared**
7 **so much about and do the best I could while I was**
8 **in there and get out of there and assist them when**
9 **it was over. Because I knew it was a very**
10 **physically draining event.**

11 **Q. I'm going to ask you about who was then**
12 **sitting around you. And I'll put -- you were in**
13 **the front row closest to the pit?**

14 **A. No. I was in the back.**

15 **Q. And that's you. And we'll pick another**
16 **color. Was someone named Sean Ronan in your area?**

17 **A. Yeah. Sean was right in front of me.**

18 **Q. Show the jury where on the diagram.**

19 **A. Right there.**

20 **Q. And then was someone named Kirby Brown in**
21 **your area?**

22 **A. Yeah. She was right over here. And Dawn**
23 **Gordon was right here. So she was one person away**
24 **from me.**

25 **Q. Do you know where James Shore was?**

1 **A. James Shore was right here in front of**
2 **Kirby Brown.**

3 **Q. As the sweat lodge ceremony, then, began**
4 **Mr. Rock, how were you feeling?**

5 **A. How was I feeling?**

6 **Q. Yes.**

7 **A. Well, a little apprehensive. But I knew**
8 **why I was there. And I knew I was going to stay**
9 **there and just waited for it to begin.**

10 **Q. When it began, what was your position?**

11 **A. My position?**

12 **Q. Yes.**

13 **A. I was right here.**

14 **Q. In terms of sitting or lying down.**

15 **A. I was sitting with my knees up because**
16 **Sean Ronan was sitting in front of me with his**
17 **knees up.**

18 **Q. At some point did you change your**
19 **position?**

20 **A. Yes. After the second round.**

21 **Q. How did you change it?**

22 **A. I had laid down. And there had actually**
23 **been some room, so I asked -- I believe at that**
24 **time I asked Sean Ronan and James Shore if they**
25 **wanted to slide in alongside me or move back. And**

1 **both of them declined.**

2 **Q. And let me ask you individually one by**
3 **one. First of all, what created more room? Do you**
4 **know?**

5 **A. People left.**

6 **Q. Do you know what round that was?**

7 **A. People left at the first and second**
8 **round.**

9 **Q. And what conversation did you have with**
10 **Sean Ronan then?**

11 **A. I just asked him if he wanted to move**
12 **back. And he said, no.**

13 **And then I asked James Shore also because**
14 **they were both closest to the pit. And they said,**
15 **no.**

16 **Q. Did you ask both of them at the same**
17 **time?**

18 **A. I asked Sean Ronan first, and then I**
19 **asked James Shore.**

20 **Q. And when you asked James Shore that, were**
21 **you able to see him?**

22 **A. Yes.**

23 **Q. What position was he in?**

24 **A. He was still sitting there. This was**
25 **after the second round. He was sitting in that**

1 **position -- you know -- just sitting there with his**
2 **knees up.**

3 **Q. Do you recall what James Shore said when**
4 **he said no?**

5 **A. To me?**

6 **Q. Yes.**

7 **A. At that time he said, no. I'm fine where**
8 **I'm at.**

9 **Q. And when you laid down, Mr. Rock, did you**
10 **lay down face down? face up?**

11 **A. I laid face down. Through prior**
12 **experience from the year before, I knew that was**
13 **the best position.**

14 **Q. And why do you say that?**

15 **A. Because when you got low down to the**
16 **ground, it was cooler, and it seemed like there was**
17 **more oxygen down there. It was easier to breath.**
18 **Not much, but it was.**

19 **Q. And when you laid face down, at what**
20 **direction was your head?**

21 **A. My head was this way.**

22 **Q. At some point did you start -- did you**
23 **feel physical change in yourself or a mental**
24 **change?**

25 **A. Yeah. I mean, that's why I laid down**

1 **after round 2. I just knew it was getting hotter.**
2 **And, of course, my intention was to stay. So I had**
3 **to do everything I could to keep myself alert**
4 **enough so I didn't pass out. Because if I passed**
5 **out, when it was over I was no good to anyone.**

6 **Q. Why did you think you might pass out if**
7 **you didn't make a change?**

8 **A. Because it was getting hotter. And James**
9 **had called for more rocks in the first two rounds**
10 **than he did the year before.**

11 **Q. And what do you remember about more**
12 **specifically?**

13 **A. About how many rocks he called? He**
14 **called, like, 12 rocks the first time and 11 the**
15 **second time or large numbers, where the first --**
16 **the year that I was there in 2008, he called for**
17 **11, and then he called for 7. So immediately that**
18 **was a sign to me that it was going to be hotter.**

19 **Q. Did you employ a tactic -- another tactic**
20 **in addition to lying down on your stomach to try --**

21 **A. That was later on.**

22 **Q. When was that?**

23 **A. That was in the fourth round.**

24 **Q. And tell the jury what you started doing**
25 **in the fourth round.**

1 A. Well, in the fourth round -- well,
 2 actually in the third round I asked -- we did the
 3 third round twice.
 4 Q. What makes you say that?
 5 A. Because the third round -- we did it.
 6 And then James said -- started going into his chant
 7 and saying what round it was, and he said third
 8 round again. And then somebody from this area over
 9 here -- I heard them say, hey. You repeated
 10 round 3. And he just continued.
 11 Q. "He" being?
 12 A. James Ray. And then after that round was
 13 up, I then again asked Sean Ronan and James Shore
 14 if they wanted to move back.
 15 Q. And how did Sean Ronan respond?
 16 A. Sean Ronan initially said, no. But when
 17 the round started, he moved back along side of me
 18 over here between me and Linda Andresano. And at
 19 that point James Shore was on his knees and his
 20 elbows, and he was laying parallel to the pit.
 21 And I looked at him and asked him if he
 22 wanted to move back. I said, there's room. I knew
 23 there was room because people kept leaving and then
 24 coming back. And so there's -- it makes space.
 25 And again he said -- he looked at me

1 distressed but firm in his conviction and said, no.
 2 I'm fine right here.
 3 Q. What makes you use the word "distressed"
 4 for James Shore?
 5 A. In the way he responded to me.
 6 Q. And how was that?
 7 A. He looked up at me like on an angle like
 8 this, and he said -- and his voice was more like
 9 out of breath. And he said, no. No. I'm fine.
 10 Q. What happened next that you remember?
 11 A. I believe at that time after Sean had
 12 moved next to me and I was laying on my stomach,
 13 that's when James Ray would throw the water on.
 14 And droplets would splash on the back of my calf
 15 muscles.
 16 And so that's when I -- I would then
 17 after that lift my legs up this way whenever he
 18 threw water on so that the hot water wouldn't
 19 splash onto me.
 20 Q. And then at some point did you seek
 21 another way to get some relief?
 22 A. Yes. That was around the fourth round --
 23 or the third -- one of the third rounds, I believe.
 24 Because I was lifting the edge to get some oxygen,
 25 which I had learned to do in 2008 from Jennifer

1 Wong and Tan Coffey. And that started giving me
 2 oxygen.
 3 What happened at that point was is that
 4 my friend Melissa, who was over here, lifted the
 5 flap way up high, and light came in. And I had
 6 mine up too. And I heard James Ray yell -- tell
 7 her to stop that. That's blasphemy, an
 8 abomination, and very strongly scolded her. And
 9 immediately I put mine down.
 10 Q. Did you lift the flap again?
 11 A. Well, after that had occurred, I didn't
 12 want to have the light be shown in. But I know I
 13 needed to have oxygen for me to stay there. So
 14 what I started doing is is during the rounds I
 15 would go into a meditative state. And I was using
 16 the words that James Ray said, open the gate, to
 17 then come back from a meditative state and lift the
 18 edge, because then the light wouldn't show. And
 19 that's what I did through the end of the -- every
 20 time through the end.
 21 Q. And explain that to us. When would you
 22 hear Mr. Ray say, open the gate?
 23 A. At the end of a round.
 24 Q. And what would happen when Mr. Ray said,
 25 open the gate?

1 A. He would open the gate, which is a flap
 2 that covers the opening, and light would come in.
 3 And one of the things I noticed is it didn't get
 4 any cooler where I was unless I lifted the side.
 5 And it certainly wasn't any oxygen.
 6 Q. And so from the fourth round on, what did
 7 you do every time Mr. Ray opened the gate?
 8 A. I lifted the edge.
 9 Q. We're talking about where? Show us
 10 where.
 11 A. It was right -- well, right in front of
 12 me. Because my head was up against the edge. And
 13 I would lift it. And then when he said, close the
 14 gate, I would put it down and I would do everything
 15 I could to stay from passing out and be in a state
 16 like a hypnotist. When he hypnotizes you, he says
 17 a word, and you come out of it. For me, it was
 18 open the gate.
 19 Q. How high did you lift the edge each time?
 20 A. I would say two to three inches.
 21 Q. And how wide of an area?
 22 A. Probably a foot, two hands.
 23 Q. And how long would you keep it open?
 24 A. I would keep it open the whole time that
 25 people were coming in or out or the flap was open.

1 **Because when he said, close the gate, I would just**
2 **let it go back down.**

3 **Q.** By round 4 what was your observation as
4 to the heat inside the sweat lodge?

5 **A.** Well, it's difficult to gauge when it's
6 really hot. But you know when it's really hot when
7 the year before you experienced less rocks coming
8 in. And then you start to feel that. And so I was
9 feeling the heat. And my whole focus was -- as I
10 stated, was to make it through so that I didn't
11 pass out.

12 **Q.** And was there a change in your mental
13 condition between round 1 and as the sweat lodge
14 went on?

15 **A.** Oh, yeah. Absolutely.

16 **Q.** Explain that for the jury.

17 **A.** Well, it was a battle to stay in there.
18 And so I was using -- even though it wasn't what I
19 was supposed to be doing in lifting the side,
20 because it was such an abomination, I had to do it.
21 **Because whenever I went to a James Ray**
22 **event, I was there for the people that came there.**
23 **There was a lot of really good people that came to**
24 **his events. And I really loved those people. And**
25 **so that was my intention. My intention was to stay**

1 **there and be with them.**

2 **Q.** Mr. Rock, yesterday you talked about an
3 altered state of consciousness?

4 **A.** Yes.

5 **Q.** Did you experience that inside the sweat
6 lodge?

7 **A.** I would say that it was altered in the
8 way I described, as more I went into a meditative
9 state, as opposed to the year before when we did
10 the whole -- the breathwork, where I actually saw,
11 like, a hallucination. Okay?

12 **I wasn't hallucinating. But what I was**
13 **doing was going inside myself in a meditative**
14 **state. And that slows your body down. It slows**
15 **how much oxygen you need and that type of thing.**

16 **And then I would do that because it was**
17 **working. It was allowing me to lift the side every**
18 **time and not pass out.**

19 **Q.** Did you become aware of someone named Lou
20 Caci?

21 **A.** Yes. I knew Lou.

22 **Q.** And did you become aware of Lou during
23 the sweat lodge ceremony?

24 **A.** Yes, I did.

25 **Q.** How did you become aware of Lou?

1 **A.** It was after -- it was towards the end of
2 a round. I think the gate was open. I'm not
3 100 percent. Or maybe the gate wasn't open. But
4 all of a sudden I heard James Ray say, Lou, Lou,
5 Lou, this way. All of a sudden I heard him, Lou,
6 scream out and something about falling in the pit
7 or something like that. And then as Lou was
8 exiting or something, I heard James Ray say, well,
9 that's a souvenir for you to take home with you.

10 **Q.** Did you ever see Lou or just hear him?

11 **A.** During that time. No. I did not see
12 him. I was face down.

13 **Q.** Did you ever change your position lying
14 face down with your head toward the end of the tent
15 throughout the ceremony?

16 **A.** Just after I got into that position, I
17 stayed there. I didn't look up. I was busy -- you
18 know -- during the round. And I was busy holding
19 up the edge for the whole time that the gate was
20 open.

21 **Q.** And did you, Mr. Rock, stay in the sweat
22 lodge for the entire ceremony?

23 **A.** Yes, I did.

24 **Q.** Did you ever become aware during the
25 ceremony of Linda Andresano?

1 **A.** No. Because other than the beginning
2 when she sat next to me -- I knew she was sitting
3 up next to me. And then Sean Ronan came in between
4 us. And he was laying down next to me. And I
5 stayed laying down. So no. I wasn't aware of what
6 she was doing.

7 **Q.** I'm going to ask you some questions now
8 about Kirby Brown. Did Kirby ever change her
9 position, that you were aware of?

10 **A.** No.

11 **Q.** And I'm going to clear our board. And if
12 you'll just put on for the jury again your position
13 and then Kirby's position.

14 **A.** That's my position, Dawn Gordon and Kirby
15 Brown. We were all laying quite close together.

16 **Q.** At some point during the ceremony did you
17 become aware of Kirby?

18 **A.** Yes. I think it was at the end of the
19 sixth round. I started to hear a gurgling. And I
20 didn't know what it was. At that time I wasn't
21 able to move myself. I was just holding on to stay
22 where I was at and do what I intended to do.

23 **And I heard her gurgle. And then I heard**
24 **the gate was open, and I was lifting the edge. And**
25 **I thought to myself I -- if I could help somebody,**

1 I would. But I just couldn't.

2 And then I heard somebody say, Kirby's in
3 trouble. She needs to get out of here now. And
4 that was about the time the gate was closing after
5 the sixth round. And that's when James Ray said,
6 well, we're closing -- I forget his exact words.
7 But he's closing the gate, and we'll take care of
8 her afterwards, after the round.

9 Q. You testified that if you had been in a
10 position to help Kirby, you would have been. What
11 about the sound that you heard made you conclude
12 that she needed help?

13 A. Well, from experience watching
14 television, I guess would be when you hear somebody
15 gurgling their last breath, you've seen it on TV.
16 And it sounded exactly the same. So I was
17 concerned. But yet at that point I was barely
18 holding on myself. So you just have to give it up
19 and hope for the best.

20 Q. When you heard Kirby gurgling, describe
21 for the jury how much other noise there was in the
22 sweat lodge at that time.

23 A. I didn't hear any other noise because it
24 was right before the gate was closed for the
25 seventh round. And typically anybody who would

1 have came in or come out would have already been in
2 there. And it got quiet because we were all
3 waiting for the gate to be closed. And then James
4 would start his chanting. So the only sound that I
5 heard was Kirby Brown.

6 Q. The voice that you heard, Mr. Rock, call
7 out about Kirby being in trouble -- can you show
8 the jury where you heard the voice come from on the
9 diagram.

10 A. I had thought it was -- it was hard to
11 say, but I thought I heard it from over here. So I
12 just heard a voice. My recall, it was over that
13 area. But --

14 Q. And when that voice called out that Kirby
15 was in trouble, how much other noise was there in
16 the sweat lodge?

17 A. It was very clear. You could hear the
18 words. Kirby's in trouble. She needs to get out
19 of here. That's when it was close the gate. We'll
20 take care of her afterwards.

21 Q. And then you testified that Mr. Ray
22 responded?

23 A. Yes. He responded, we're closing the
24 gate. We'll take care of her afterwards, or we'll
25 deal with that afterwards. He wasn't going to

1 stop.

2 Q. What round do you believe that was?

3 A. That was between the sixth and seventh
4 round.

5 Q. How many rounds did Mr. Ray conduct on
6 that day?

7 A. Well, when I say the sixth and seventh
8 round, it was really the seventh and eighth because
9 he did round 3 twice. So -- but he called it round
10 6 and then round 7.

11 Q. How many rounds, then, do you believe --

12 A. Eight.

13 Q. -- were held after the statement about
14 Kirby being in trouble?

15 A. That was the last round.

16 Q. Do you know how long that last round was?

17 A. It seemed like as long as all the other
18 ones.

19 Q. For that last round, describe what your
20 conditions was?

21 A. My condition at that time was I wanted it
22 to be the last round. I knew that physically -- I
23 couldn't keep going. Even taking the oxygen I was
24 feeling very drained and very weak. So I was just
25 hoping that was going to be the last round.

1 Q. Did you know how many rounds there would
2 be?

3 A. James always said that there is typically
4 seven rounds. But he doesn't know. He could go
5 longer than that. So don't count on that number.

6 Q. And you made a comment earlier about the
7 air in your area of the sweat lodge. What do you
8 recall about your air?

9 A. I recall that it was extremely hot in
10 there. I recall that when they opened the gate
11 that it didn't help at all. It didn't do anything
12 for us. That's why I started holding up the side.
13 It was extremely hot.

14 Q. And then you made the comment earlier
15 about when water was thrown on the rocks, you would
16 feel it?

17 A. Yeah. When the water would be thrown on
18 the rocks, it would splash on the back of my calves
19 because I was laying -- you know -- I wasn't that
20 close to the pit. But I was laying up against the
21 side of the lodge. And so I was close enough for
22 it to splash. So then I would lift my legs up when
23 he would throw water on.

24 Q. What do you remember, then, about that
25 last round?

1 A. What I remember about that last round was
2 hoping that it was over, hoping that was the end.
3 And when he said that that was it, I was glad. And
4 it took every bit of my strength just to crawl out
5 of there.

6 Q. How did you get out of there after it was
7 over?

8 A. Well, of course, I wanted to get out as
9 quick as I could. And people were in line, let's
10 say, and so I had to wait. But I mustered all my
11 strength, and I started crawling out. And the
12 people were crawling out.

13 And as I got closer to the door, I could
14 see they were all going to the right, which is the
15 way they came in, this way. So they were all going
16 that way. And I believe I was behind Dawn Gordon.
17 And there was enough space. And I just had to get
18 out of there, so I just pushed through and went
19 this way, over in this area because I knew I'd get
20 out quicker.

21 Q. And yesterday, Mr. Rock, you testified
22 about how many people were in the sweat lodge for
23 the last round in 2008.

24 A. Uh-huh.

25 Q. Do you have a recollection today of how

1 many people were left inside in 2009 for the last
2 round?

3 A. I really don't. I don't know.

4 Q. And in 2009 when people left the sweat
5 lodge between rounds, did you hear Mr. Ray say
6 anything to them?

7 A. Yeah. I heard him saying, you're better
8 than that. You're stronger than that. Come back
9 in. I heard him calling names of different people.
10 I believe Lou Caci was one of them. Come back in.
11 Come on back in.

12 Yeah. He didn't -- between rounds he
13 was -- seemed very animated, you might say, in
14 trying to get people to come back in.

15 Q. I'm going to put up on the overhead
16 Exhibit 145, which is a picture of the sweat lodge
17 ceremony shortly after it began.

18 But I just want you to use this
19 photograph and show the jury once you came out
20 where you went.

21 A. Where I went?

22 Q. Yes.

23 A. Well, there is the gate. And I went over
24 here. And you see this rock right here? That was
25 an alter type rock that James Ray never used, but

1 that's what I was told it was. And I laid down and
2 collapsed right there on my stomach.

3 Q. How long did you lay there?

4 A. Well, they started hosing me off. And
5 somebody was giving me cups of water. So I was
6 laying on my stomach. So I just turned my head and
7 drink the water. It took a while. I'm not sure
8 how long.

9 When I looked to my left, you see where
10 these people are beyond where these people are
11 standing. During that time I saw James Shore
12 laying on the ground. And he was lying on the
13 ground, and he was purple.

14 And because of my state of condition, you
15 become slightly off. And very nonchalantly I said
16 to myself well, he's dead. And it's horrifying to
17 even say that to you now. But somebody was working
18 on him. And I thought, that's futile.

19 After I recovered slightly, I was able to
20 roll over onto this rock on my stomach. And from
21 that position I recovered a little more, and I was
22 able to use my legs and arms to lift myself and
23 flip over. So I was sitting on that rock.

24 Over hear near the pavilion tent, which
25 is directly across from me, James Ray was sitting

1 on a chair. And I looked at him. And I was very
2 angry. And there was really nothing I could do
3 about it.

4 But I looked at him and I thought I'm
5 going to go over towards him and do something. And
6 by the time I got up, stood up, he was gone. And
7 at that time, that's when he was moving around the
8 other side and people were asking him to do
9 something to help the people that were down.

10 And that's when I heard him say, what do
11 you want me to do? I don't know what to do? I
12 can't help them. That type of dialogue he had.

13 Q. Who did you hear Mr. Ray say that to?

14 A. It must -- it was other Dream Team
15 members that were screaming that people are in
16 trouble. And, of course, I knew somebody was in
17 trouble because I saw James Shore. And I knew. I
18 just knew.

19 Q. What did you do next?

20 A. Well, I walked forward. And there was
21 this tarp over here. And it had, like, a puddle of
22 water in it. And so I laid down in the water.
23 Because he had left, and my energy was gone again.
24 And so I was cooling off. I was -- I believe I was
25 laying next to Dawn Gordon.

1 Once I recovered from there, over in this
2 area there were some towels. So I started getting
3 towels because I started getting cold. And every
4 time I put a towel on myself, I'd walk this way,
5 and somebody else would be shivering. And so I
6 would take the towel off my back and give it to
7 them. And I did this numerous times, which was odd
8 because you would think that I would grab the
9 towels. But I just kept doing that.

10 And then I -- and there was oranges and
11 stuff over in the tent over this way. So I started
12 getting oranges and eating them. It was helping me
13 revive. And then I started giving them to anybody
14 who I thought could eat an orange.

15 All the way in this area there was
16 nothing but people laying down. It looked like
17 mass amount of bodies just laying there. Some
18 people were in different states of consciousness.
19 Some people were completely out, it appeared to me
20 at that time.

21 Q. Did you ever go by the fire?

22 A. Yeah. I started going by the fire
23 because I would go from being okay, and then I came
24 over here by the fire, and I would warm up and then
25 would get too hot. So I would go back and try to

1 help somebody.

2 And around that time is when the
3 ambulances started coming down the hill. And so it
4 was just a mass of ambulances, police cars. It was
5 like an army of guys coming at us. And then, of
6 course, the helicopters started showing up. And it
7 reminded me of the movie M.A.S.H.

8 Q. And what was your state of mind at that
9 time, Mr. Rock?

10 A. Well, I had recovered better than a lot
11 of people. My state of mind was I was in shock. I
12 was just -- there were just so many things to
13 comprehend all at once that it was overwhelming.

14 Q. I'm going to take you back, then, to
15 inside the sweat lodge. As you were leaving when
16 it was over, were you aware of Kirby Brown?

17 A. When I was leaving when it was over, I
18 was aware that as I went around the pit, on that
19 side of the lodge there was bodies there. But I
20 was in no condition to do anything about it because
21 my whole focus was to get out. I had to get out.

22 Q. Did you become aware of Kirby later?

23 A. That was later on after the paramedics
24 were there. Megan Fredrickson was instructing
25 people to go back and take a shower, go away from

1 that area. She was probably over in this area with
2 her husband Josh. And I started to walk back this
3 way. And she told me not to go back there.

4 As I walked around the backside of that
5 lodge, on the far side of the lodge there was two
6 gurney stretchers, and they were up in the air.
7 And one was James Shore, and the other was Kirby
8 Brown. And there was nobody around them, and they
9 had these defibrillators on them. And these
10 defibrillators were pumping their chests. And I
11 knew in my heart that they were no longer with us.

12 MS. POLK: Your Honor, would this be a good
13 time to take the morning break?

14 THE COURT: We'll do that, Ms. Polk.

15 Ladies and gentlemen, we'll take the
16 morning recess. Please remember the admonition.
17 And be back in the jury room at five after. That's
18 20 minutes.

19 Thank you.

20 (Recess.)

21 THE COURT: The record will show the presence
22 of Mr. Ray, the attorneys, the jury. Mr. Rock is
23 on the witness stand.

24 Ms. Polk.

25 MS. POLK: Thank you.

1 Q. Mr. Rock, inside the sweat lodge, when
2 you heard the conversation concerning Kirby and you
3 heard Mr. Ray respond?

4 A. Yes.

5 Q. Did you observe what Mr. Ray did next?

6 A. No. I did not observe exactly what he
7 did as far as looking at him. I knew that the gate
8 got closed because the light went out. And I, of
9 course, dropped my hands. And at that time he
10 started chanting. He started doing his chanting
11 and that type of thing. So we proceeded.

12 Q. Was there any inquiry into how Kirby was
13 doing --

14 A. No.

15 Q. -- by Mr. Ray?

16 A. No. None.

17 Q. Inside the sweat lodge do you know
18 whether Kirby Brown -- what her position was in
19 terms of face up or face down?

20 A. I know that she was -- originally I know
21 that she was laying on her back. That's all I
22 really know. That was early on when we started.

23 Q. When you heard the gurgling sound, do you
24 know what her position was?

25 A. No, I don't.

1 Q. Do you know what position James Shore was
2 in inside the sweat lodge in terms of face up or
3 face down?

4 A. Well, as I stated before, when I spoke to
5 him, the last time he was on his hands and knees
6 and he was parallel to the pit. After that point I
7 don't know where he was.

8 Q. And when the ceremony was over, Mr. Rock,
9 why did you choose to go out the gate instead of,
10 for example, one the sides where you had been
11 lifting the flap?

12 A. Because it was what we were instructed to
13 do. We were instructed to go around and do that.
14 So that was my only thought was to do what I was
15 supposed to do. And, like I said, when I seen an
16 opening to the left, I jumped through it because I
17 knew I needed to get out of there.

18 Q. Once you were outside, do you no how much
19 time had passed between the time you were outside
20 and you saw James Shore?

21 A. It's hard to gauge time. But it was a
22 short period of time. Because I was still laying
23 there. I had been hosed off. I had some drinks.
24 And I was still in the initial position, which was
25 I crawled out and laid on my stomach. So it was at

1 the beginning of that, during that time period.

2 Q. Do you know how James Shore got out of
3 the tent?

4 A. I have no idea.

5 Q. Do you know how Kirby Brown got out of
6 the tent?

7 A. I have no idea.

8 Q. Did you ever become aware of Sean Ronan
9 outside the tent?

10 A. Not really. No. No.

11 Q. I'm going to put up on the overhead the
12 photograph of Sidney Spencer. It's Exhibit 1049.

13 A. Okay.

14 Q. When the ceremony was over -- well, let
15 me ask you this first: Were you ever aware of
16 Sidney Spencer inside the sweat lodge?

17 A. I knew she was close to me at the
18 beginning, but I didn't really focus on her.

19 Q. And I'm going to put back up Exhibit 414.
20 In terms of being close to you, can you
21 tell the jury where you believe she was.

22 A. Well, of course, I was here. And I
23 believe she was in this area over here somewhere.
24 But that's -- people would come and out. So you
25 wouldn't know if they stayed there or if they went

1 out and came back. So it's hard to say.

2 Q. Were you aware of her at all during the
3 ceremony other than position?

4 A. No.

5 Q. When the ceremony was over, did you
6 become aware of her at some point?

7 A. Yes. When we were outside -- when I was
8 outside the sweat lodge.

9 Q. What drew your attention to her?

10 A. I heard somebody -- like -- it was, like,
11 a screaming, a commotion. And there was, like,
12 three or four people carrying somebody. And I
13 looked, and I saw that it was Sidney Spencer. And
14 she started flailing, like, convulsing. And they
15 dropped her. And she fell on her head. That's
16 what I remember.

17 Q. When you became aware of that -- and
18 again I'll put back up Exhibit 145 -- where did you
19 see people carrying Sidney?

20 A. It was way over here. It's not in the
21 picture. But it's, like, this way, of that
22 position and toward the end of -- along the edge of
23 a tarp that would not be in that picture right now.

24 Q. Do you know who the people were that were
25 carrying Sidney?

1 A. I couldn't say.

2 Q. Can you tell us whether they were
3 emergency medical responders versus participants or
4 staff?

5 A. Oh, no. They were participants. They
6 were -- you know -- it was obvious they were
7 participants.

8 Q. Did you become aware of Sidney at any
9 time after that?

10 A. No, I didn't, other than to know that she
11 was in the hospital.

12 Q. Do you know, Mr. Rock, how long the
13 ceremony lasted?

14 A. I believe it lasted two and a half hours.

15 Q. And why do you believe that?

16 A. Well, when the chopper came in, the guy
17 who is flying the chopper in his blue jump suit
18 came out. And I don't know who was next. Tess
19 Wong. And there was a couple people laying on the
20 ground, which would be over in this position. And
21 the chopper pilot asked them -- you know -- he was,
22 like, what was going on here?

23 MR. KELLY: Your Honor, object to the hearsay.

24 THE COURT: Sustained.

25 Q. BY MS. POLK: I'm going to ask you some

1 questions about Liz Neuman, Mr. Rock.

2 **A. Yes.**

3 **Q.** Were you aware of Liz Neuman during the
4 sweat lodge ceremony?

5 **A. Yes.**

6 **Q.** And what were you aware of?

7 **A. I was aware of her position.**

8 **Q.** And anything else?

9 **A. That's -- that's it.**

10 **Q.** Did you become aware of Liz Neuman when
11 the ceremony was over?

12 **A. Yes, I did.**

13 **Q.** Where were you when you became aware of
14 Liz?

15 **A. I was outside the sweat lodge.**

16 **Q.** And can you show us on this photograph
17 where you were.

18 **A. She was in that area over here where I**
19 **was just talking about Tess Wong and some other**
20 **people who had spoke to the chopper pilot. And a**
21 **paramedic came walking up from that direction. And**
22 **he had some type of device, monitoring device. And**
23 **there was just so many people laying around.**

24 **So he turned Liz Neuman over. And that's**
25 **when I realized it was Liz Neuman. And I had**

1 **walked past her a couple times not knowing -- you**
2 **know -- just wandering and doing what I could for**
3 **others.**

4 **And then he hooked her up to his medical**
5 **device. And I stood there and I watched. She did**
6 **have some signs of life according to the machine.**

7 MR. KELLY: Your Honor, object to the
8 narrative.

9 THE COURT: Overruled.

10 Please ask your next question, Ms. Polk.

11 **Q.** BY MS. POLK: Were you aware, Mr. Rock,
12 of whether any water was used to cool Liz Neuman
13 down?

14 **A. She was laying in a puddle of water, and**
15 **she was soaked. Her hair was all wet and her whole**
16 **body. She was wet.**

17 **Q.** And do you -- you talked about the
18 paramedic coming up to Liz. Are you able to recall
19 today how much time had passed since the end of the
20 sweat lodge ceremony and the time that a paramedic
21 approached Liz?

22 **A. It was getting dark. It was dusk.**

23 **Q.** In terms of the arrival of the first
24 emergency -- the emergency responders and someone
25 paying attention to Liz, do you have any knowledge

1 of how much time had passed?

2 **A. She was one of the last -- she wasn't one**
3 **of the first ones they focused on. They were all**
4 **focusing on what I come to find out is James Shore**
5 **and Kirby Brown.**

6 MR. KELLY: Your Honor, object to the hearsay
7 response.

8 THE COURT: Sustained.

9 **Q.** BY MS. POLK: Where do you believe --
10 when the paramedic first approached Liz, what was
11 her position in terms of face up or face down?

12 **A. She was laying on her side. And most of**
13 **her face was down. And her hair was over her face.**
14 **That's why I didn't know who she was.**

15 **Q.** During the time that you were wandering
16 around doing what you could do, did you observe
17 Mr. Ray?

18 **A. Other than what I stated, as he got up**
19 **and didn't help anyone, no. I mean, he was -- he**
20 **wasn't around. I didn't see him after that.**

21 **Q.** And in terms -- you talked about how you
22 recovered. Did you ever seek medical attention?

23 **A. No, I did not.**

24 **Q.** And physically speaking, limiting it
25 first to that night, did you have any effects from

1 being inside the sweat lodge?

2 **A. Physical effects?**

3 **Q.** Just physical effects.

4 **A. No.**

5 **Q.** Once you recovered how were you feeling?

6 **A. Well --**

7 **Q.** Physically.

8 **A. It's hard to determine because as your**
9 **emotions and your adrenaline goes, it creates a**
10 **physical effect on you. So it was very strange.**

11 **Q.** How long were you down at the scene of
12 the sweat lodge that night?

13 **A. Like I said, it started getting dark,**
14 **dusk time period.**

15 **Q.** And then how long did you stay down there
16 before going to some other location?

17 **A. Well, then Megan Fredrickson -- I asked**
18 **her if there was anything I can do. And she said,**
19 **try and get people that are still here to go take a**
20 **shower and go to the dining hall for dinner.**

21 **Q.** How much time would you say had passed
22 from the end of the sweat lodge ceremony until
23 Megan gave that direction?

24 **A. Hour and 35 minutes, two hours. I'm not**
25 **sure.**

1 Q. And during that time, did you ever become
2 aware of Daniell Granquist.

3 A. Yes, I did.

4 Q. Where were you when you became aware of
5 her?

6 A. Once again, I was over here towards the
7 tent. And there is an army of ambulances, police
8 cars, fire trucks. There is helicopters coming in.
9 They landed over in this far area.

10 And Daniell turned to me and said --
11 because she knew that I had done this event before,
12 she said, Mark, is this how it's supposed to be?

13 MR. KELLY: Your Honor, objection. Hearsay.
14 Ask it be stricken from the record.

15 MS. POLK: Your Honor, this is not hearsay.

16 THE COURT: Overruled.

17 Q. BY MS. POLK: What did Daniell say?

18 A. She said -- she turned to me and said --

19 MR. KELLY: Your Honor, same objection.

20 THE COURT: Counsel, please approach.

21 And, ladies and gentlemen, Mr. Rock,
22 please feel free to stand.

23 (Sidebar conference.)

24 MR. KELLY: Judge, assert that this violates
25 our right of confrontation. Daniell Granquist is

1 not scheduled as a witness in this matter. And
2 it's clearly hearsay. There is no exception. It's
3 not proper.

4 THE COURT: Ms. Polk.

5 MS. POLK: Your Honor, it's not hearsay. It's
6 not offered to prove the truth of the matter. It's
7 quite the opposite. What Daniell says to him is
8 how it's supposed to be.

9 THE COURT: And I agree, Mr. Kelly. This is
10 important. That was not a hearsay statement at
11 all. There was nothing in there offered for the
12 truth, what was called old days res gestae, that
13 kind of thing.

14 But here's what I'm afraid of, Ms. Polk:
15 These people aren't interviewed. I know this man
16 testified in another context. I never know. I
17 never know. That's why I called people forward on
18 this. Because what he's saying now, it's not
19 offered for the truth. It would help. I think a
20 good response is if it's not offered to the truth,
21 it kind of takes care of the 106. I mean the 104,
22 or five problem of instructing.

23 If it's made clear that way, because I
24 think jurors have trouble sometimes sorting out
25 when people say things like this that that

1 statement was clearly not hearsay, but it's what
2 somebody said who is not on the stand.

3 So if there is a response that clears
4 that up sometimes, that can do that, can help out.
5 Again, though, he might go right into hearsay.

6 MR. KELLY: Judge, if it's not offered for the
7 truth, then I'd argue it's relevance. Any
8 relevance is outweighed by 403 potential prejudice,
9 needless waste of time, confusion of the issues.

10 And if it's going to be asked, I'd ask
11 for an instruction from the Court after his
12 testimony.

13 THE COURT: Relevance. That's a totally
14 different thing. I'll sustain on relevance ground.

15 Ms. Polk, how is it relevant?

16 MS. POLK: Judge, it's clearly relevant. This
17 is a participant who is given that briefing, who
18 expects that this is what's supposed to happen.
19 And the issue has been why don't people leave? Why
20 don't people take care of their bodies? The answer
21 is because Mr. Ray tells them, essentially, this is
22 what's going to happen.

23 And this is a participant, her first time
24 in the sweat lodge, who's had the briefing, gone
25 through the sweat lodge. And her question to Mark

1 as a Dream Teamer, knowing he's been in this
2 before -- her question is is this what's supposed
3 to happen? Is this normal? I can't remember what
4 he said.

5 THE COURT: Is this how it's supposed to be?

6 MS. POLK: Yeah.

7 THE COURT: The way it was phrased. Okay.

8 Mr. Kelly, relevance. You've asserted a
9 new ground there. And Ms. Polk's responded to
10 relevance.

11 MR. KELLY: I would reassert that, Judge, if
12 the State of Arizona is prosecuting my client based
13 on his words, that's a significant First Amendment
14 problem. I think that's what she's saying still.
15 It's a manslaughter case.

16 THE COURT: Overruled.

17 (End of sidebar conference.)

18 THE COURT: Ms. Polk.

19 MS. POLK: Thank you, Your Honor.

20 Q. Mr. Rock, will you tell the jury what
21 Daniell Granquist said to you.

22 A. She looked at me in a very surreal moment
23 and said, Mark, is this how it's supposed to be?
24 And my response was one of -- I almost laughed
25 because it was so surreal. And I said, no. No.

1 **This isn't how it's supposed to be.**

2 **Q.** I had been asking you a question about
3 your physical condition after the sweat lodge. You
4 talked about the saging ceremony and your role in
5 that. Did you ever feel sick after doing the
6 saging?

7 **A.** **Did I feel sick after saging?**

8 **Q.** Yes.

9 **A.** No.

10 **Q.** Where did you go from the scene around
11 the sweat lodge that night? Where did you go next?

12 **A.** **As I went back to the dining hall, I**
13 **checked on a lady called Gabrielle -- she had gone**
14 **to her cabin -- to see if she was okay.**

15 **Q.** And what made you go to check on
16 Gabrielle?

17 **A.** **I believe some -- I don't know who told**
18 **me she was in her cabin or something like that. So**
19 **I was just making sure that she didn't pass out in**
20 **her cabin all by herself.**

21 **Q.** Did you find Gabrielle?

22 **A.** **Yes, I did. And she said she was fine.**
23 **Then I proceeded to go to the dining hall. That's**
24 **where everybody went that could walk.**

25 **Q.** Do you know around what time it was that

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1 you were up at the dining hall?

2 **A.** **Oh. It was dark out.**

3 **Q.** And you said everybody went up there.
4 Who do you mean?

5 **A.** **Everybody -- the Dream Team -- well, I**
6 **shouldn't say the Dream Team members. The**
7 **participants went that were able to walk and go up**
8 **there. And -- I don't know. The police came up**
9 **there. And there was some of the people from**
10 **Angel Valley that were up there.**

11 **Q.** And were there paramedics up there?

12 **A.** **They did come up to ask and see if**
13 **anybody wanted to go to the hospital, if anybody**
14 **needed assistance. Some people did. Some people**
15 **did say, yeah. I'll go, or whatever, and left. I**
16 **would say most of the people that were there stayed**
17 **there.**

18 **Q.** And how long were you up at the dining
19 hall?

20 **A.** **Oh, it was late. 10:00 o'clock, 11:00.**
21 **I'm not sure. It was late.**

22 **Q.** At the dining hall did any authorities
23 make statements to you, to you as a group?

24 **A.** **Yes. They came in. There was quite a**
25 **few police officers. They set up two tables where**

1 **they were interviewing people. At one point they**
2 **came in and confirmed. They said that James Shore**
3 **and Kirby Brown had passed away, kind of told us**
4 **that Liz Neuman and some other people were taken to**
5 **the hospital, that type of thing.**

6 **Q.** And who is "they"?

7 **A.** **The police.**

8 **Q.** The police told you that?

9 **A.** **The police did.**

10 **Q.** Were statements taken that night by the
11 police?

12 **A.** **Yes.**

13 **Q.** And did you provide a statement?

14 **A.** **Yes, I did.**

15 **Q.** And do you recall who you provided a
16 statement to?

17 **A.** **It was a tall woman police officer.**

18 **Q.** And where were you when you provided that
19 statement to the officer?

20 **A.** **In the dining hall.**

21 **Q.** How long did you spend with the female
22 police officer in providing a statement?

23 **A.** **20 minutes, I guess. 15, 20 minutes.**
24 **They were interviewing everyone. I had waited**
25 **quite a while. I didn't give an interview**

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1 **immediately. I was -- I was dealing with talking**
2 **to the participants. They were asking me**
3 **questions. Because I was a Dream Team member, I**
4 **seemed to be the one to talk to. None of James**
5 **Ray's people's were there. So -- and I know that**
6 **Christina Jobe --**

7 MR. KELLY: Your Honor, this is nonresponsive.

8 THE COURT: Sustained.

9 **Q.** BY MS. POLK: How many Dream Team members
10 were up at the dining hall?

11 **A.** **I think myself and Jennifer Haley I know.**
12 **That's about it.**

13 **Q.** And what, Mr. Rock, was your mental state
14 of mind at the time? What was your mental
15 condition?

16 **A.** **I was reeling from what happened. I was**
17 **confused. I didn't -- how much trouble is there?**
18 **This is way beyond anything I expected to happen.**
19 **So my mind is going a million miles an hour. And**
20 **then talking to people. And, of course, the news**
21 **that Kirby and James were deceased was devastating.**
22 **I knew in my heart they were gone. But to finally**
23 **hear it, this is just too much.**

24 MS. POLK: Your Honor, may we briefly
25 approach?

1 THE COURT: Yes.

2 (Sidebar conference.)

3 MS. POLK: Judge, this next thing that
4 Mr. Rock is going to testify to I thought I would
5 just approach because I anticipate Mr. Kelly will
6 object. And just allowing them to do it at the
7 bench instead of in front of the jury.

8 Mr. Rock speaks to a couple of Dream Team
9 members who have been interviewed by the police.
10 And they tell him not to cooperate, that the police
11 are trying to frame James Ray.

12 And so when Mr. Rock gives his statement,
13 he is not cooperative. And that's his explanation
14 for not being cooperative. And some of the
15 statements that the jury heard today, he did not
16 provide that to the police at the time. He'll
17 explain his healing process and when he did finally
18 speak to the police.

19 I believe it's relevant to explain why he
20 did not give the police the full story that he's
21 given the jury today. But I thought I would just
22 approach and let Mr. Kelly make his objections here
23 at the bench.

24 MR. KELLY: Judge, perhaps, then, Mr. Rock
25 could be considered for being prosecuted for

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1 perjury because he gave sworn testimony in front of
2 this court in November that those statements were
3 accurate and they could be relied upon by this
4 court. That's on the record. I have a copy of the
5 transcript.

6 So if his statement is different today,
7 I'm entitled to impeach him with a prior
8 representation to the Court that they're accurate.
9 Now, this mythical connection between James Ray and
10 Dream Team members to Mr. Rock -- there is no
11 foundation for that. There is no factual
12 information that Mr. Ray instructed anyone to
13 instruct Mr. Rock to do something. And so there is
14 no foundation.

15 MS. POLK: Let me address what Mr. Kelly just
16 said. This witness has not testified in a way that
17 conflicts with his testimony at the 404(b). It's
18 the statement that's taken that night on October 8
19 by Detective Parkison where he offers very little
20 information. So I'm not sure what the reference to
21 the perjury was.

22 MR. KELLY: The reference to the perjury is I
23 asked him a specific question whether we could rely
24 on the answers and the representations he made on
25 October 8. He said, yes. They were true.

1 I intend to impeach him because they're
2 quite different from his testimony today. If he
3 wants to explain try to explain away again, but it
4 has nothing to do with Mr. Ray's instructions.

5 THE COURT: This alone would be the type of
6 pretrial issue that would be a pretrial issue in
7 the beginning of the trial, and it's something
8 we're dealing with here at the bench.

9 MS. POLK: Judge, that's why I approached.
10 This is another witness that for strategic reasons
11 the defense chose not to interview. But it is his
12 state of mind that night. He's just been told by
13 two other ladies that they were interrogated and
14 that the police are trying to frame James Ray. And
15 that's his explanation for the very brief statement
16 he gave that night.

17 MR. KELLY: Judge, we chose to rely on the
18 disclosure provided by the State of Arizona, our
19 own investigation and prior sworn statements made
20 by this witness as to the substance of his
21 testimony.

22 THE COURT: This is pertinent to what even
23 came up before, Mr. Kelly. I know people don't
24 seem to interview. And this is an unusual case
25 because how many interviews would have to be done?

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1 My goodness. It would take a year to do the
2 interviews.

3 And so if there is not some narrowing of
4 the witness list, I understand the problem. But
5 that is how things are dealt with. There are
6 interviews done, and that's how people find out
7 where they are.

8 If the state doesn't have a written
9 statement provided and doesn't know -- again, if
10 Ms. Polk isn't knowing that this is going to come
11 out, then there -- well. We get into that whole
12 area of what you need to disclose.

13 MR. KELLY: What was disclosed was his
14 testimony in November. What we relied upon were
15 his sworn responses in November.

16 THE COURT: In his sworn response has he said
17 no? No one every tried to intimidate me or tell me
18 not to cooperate?

19 MR. KELLY: He said that we could rely on the
20 substance of his responses as truthful and
21 accurate. He made no excuses about the answers he
22 had provided to Detective Parkison on October 8,
23 2009. So now apparently he has an explanation.
24 And that was not disclosed.

25 THE COURT: Well, this is --

1 MS. POLK: Judge, I just want to add that also
2 disclosed was a very lengthy interview with
3 Mr. Rock that occurred -- I think it was September
4 of 2010, that the defense has as well.

5 But to me that's game playing to think
6 you can ask one question, can I rely, not ask
7 further questions, such as how do you explain, why
8 did you say so little, and why at the 404(b), and
9 why in your interview, and expect now to keep the
10 explanation out.

11 THE COURT: For many years it seemed to me the
12 idea was you need to do interviews so that you know
13 when these things come up. That's why people do
14 interviews. Not that it all has to be provided at
15 the same time. There are ethical reasons for both
16 parties to be providing information when -- that's
17 why it's dangerous to talk interviews when you
18 don't have an independent record made, if it's just
19 a lawyer talking to a fact witness. There can be
20 some real issues that come up in the situations.

21 This is obviously too much to deal with
22 right now.

23 So, Ms. Polk, I don't know how much else
24 you're going to do with Mr. Rock. If nothing else,
25 I'm going to take the lunch recess right now, if

1 you've covered everything.

2 MS. POLK: I do have a couple other areas to
3 cover. I guess it's up to the Court. I'd prefer
4 to cover this and cover the other areas.

5 THE COURT: Then I'm going to go ahead and
6 break right now.

7 (End of sidebar conference.)

8 THE COURT: Ladies and gentlemen, we will go
9 ahead and take the noon recess and start a bit
10 earlier. Please be back in the jury room at 1:15
11 so we can get started as soon as we can after that.

12 Please remember the admonition.

13 And, Mr. Rock, please remember the rule
14 of exclusion I've been discussing with you.

15 And the jury and Mr. Rock are excused at
16 this time.

17 I'll ask the parties to remain.

18 Thank you.

19 (Proceedings continued outside presence
20 of jury.)

21 THE COURT: The record will show the jury and
22 the witness have left the courtroom.

23 We had entered into an extended bench
24 conference. Ms. Polk indicated the next area she
25 wished to inquire about. And it had to do with an

1 explanation regarding perhaps the accuracy of
2 Mr. Rock's initial statement to police authorities.
3 And it raises a number of various issues, hearsay,
4 being one. But rather than just have this huddle
5 up here at the bench, I want to have the conference
6 in this context.

7 So, Mr. Kelly.

8 MR. KELLY: Judge, if I could just -- to
9 illustrate what I was arguing at the bench
10 conference, if I could just refer to the
11 November 16, 2010, sworn testimony of Mr. Rock. I
12 was the attorney cross-examining him. And the
13 question was: Do you recall making a statement to
14 Detective Wendy Parkison --

15 MS. POLK: Counsel, I'm sorry. Could I have a
16 page.

17 MR. KELLY: Page 11, line 18.

18 Do you recall making a statement to
19 Detective Wendy Parkison back on October 8, 2009?

20 And the answer was: I barely remember
21 speaking with her because I was still in an altered
22 state.

23 I hand him the transcript. And what I
24 mentioned on the bench was page 13, line 8.

25 Question: Mr. Rock, were you in an altered state

1 when those statement were made?

2 The response was: Yeah. I was slightly
3 altered.

4 Question: Does that mean that we cannot
5 rely on the content or the substance?

6 Answer: No. It doesn't. Because it's
7 accurate as I can remember.

8 Judge, my argument on the bench was he
9 was -- that's sworn testimony given under oath to
10 this court as to our ability to rely on the
11 statement made to Detective Parkison on October 8,
12 2009. And any inconsistency or confusion was
13 purportedly because he was not in an altered state.

14 Now for the first time at this sidebar
15 conference we find out that his testimony today
16 under oath is going to be that the reason we cannot
17 rely on this statement was because two Dream Team
18 members told him not to cooperate with the police.
19 And I can avow to the Court there is no
20 indication in here that he was not cooperating with
21 the police. It's quite the opposite.

22 Now, the statements are substantially
23 different than what he told the jury today. And I
24 would intend to use those for impeachment purposes.
25 But this path that the state wants to go down now,

1 explaining the inconsistencies with new evidence --
 2 it was not disclosed. And it begs the question,
 3 then under oath why did he give this response back
 4 in November? That was my reference to perjury.

5 Finally, Judge, it lacks foundation,
 6 because it has to be connected somehow to Mr. Ray.
 7 And if you recall the sequence of events, Mr. Ray
 8 is in the back of a police car. So I think it's
 9 quite a leap of faith to believe that somehow he
 10 directed two Dream Team members to tell Mr. Rock
 11 not to cooperate with the police.

12 THE COURT: And that's absolute hearsay,
 13 serious hearsay, to say -- if this is what
 14 happened, two people came up and said Mr. Ray said
 15 don't do this. You know, that's totally offered
 16 for the truth of what transpired.

17 Is there another way it can come in and
 18 not be offered for the truth? Yes. But look at
 19 the special instruction to try to do that. We have
 20 done 105 special instructions in this trial.

21 But the other thing, Ms. Polk, and
 22 certainly I want your response. But has there been
 23 some consideration with Mr. Rock talking to
 24 independent counsel before he continues with his
 25 testimony?

1 MS. POLK: Your Honor, first of all, what
 2 mister -- I disagree with Mr. Kelly that the
 3 testimony given today is inconsistent with what he
 4 said that night. And it's certainly not
 5 inconsistent with the 404(b), which is when he was
 6 under oath. So, again, this reference to perjury
 7 is confusing to me.

8 THE COURT: Well, let's not go any further.

9 Mr. Kelly, Ms. Polk is confused about
 10 that. I don't know that I'm entirely clear. Let's
 11 not go on and on through an argument and go back
 12 and catch up on these points.

13 MR. KELLY: Let me point out the specific
 14 inconsistencies. On page 14, line 6 --

15 MS. POLK: Of what transcript?

16 MR. KELLY: Of the same transcript, the sworn
 17 testimony, November 16. I'll back up to page 13.
 18 I'm sorry. For the record, it's page 13, line 15.

19 Question: Very good. If you would,
 20 please, then, turn to page 3, line 22.

21 Detective Parkison asked you the
 22 question, have you ever done a sweat lodge before?
 23 What was your response?

24 Yeah. The answer.

25 And she said, where? What was your

1 response.

2 The answer: Here last year.

3 And Parkison, and I'm paraphrasing, says
 4 okay. What was your statement?

5 I was a participant.

6 And then here's the inconsistent
 7 statement, Judge: Then she asked the question, was
 8 there anything different about the sweat lodge from
 9 last year as opposed to this year? What was your
 10 response?

11 No.

12 That is inconsistent.

13 She then asked the question, is it the
 14 same? What was your response?

15 He said it felt the same.

16 And I asked him, could you read your
 17 response to Judge Darrow, please.

18 And the answer was, it's the same --
 19 pretty much the same heat level, the same -- it was
 20 enclosed the same way.

21 Then, finally, Judge, in terms of
 22 inconsistency, the detective on that day asked him
 23 during the end of the statement about why he didn't
 24 render aid at the end. Essentially -- and I'm
 25 paraphrasing. I'll have to find it in the

1 transcript. He says because I didn't notice anyone
 2 in trouble.

3 MS. POLK: I'm sorry. I didn't hear what you
 4 said.

5 MR. KELLY: He said I didn't notice anyone who
 6 would have been feeling badly.

7 So those are specific inconsistent
 8 statements made under oath -- excuse me -- made
 9 during October 8, 2009. And then under oath the
 10 only explanation is, as I read initially, there was
 11 an altered state, that he was in an altered state.
 12 But he said yeah. You can rely on my responses.

13 THE COURT: And you anticipate, Ms. Polk,
 14 that -- well, what's your response?

15 MS. POLK: Well, first of all, with what
 16 occurred at the 404(b) hearing was simply Mr. Kelly
 17 impeaching a witness with prior inconsistent
 18 statements.

19 To read it to suggest that mister -- he
 20 was reading what was said from this interview that
 21 night. And that's all he was doing. He wasn't
 22 getting this witness -- this witness wasn't
 23 testifying that what was said was accurate. He was
 24 being impeached, in other words.

25 So to suggest somehow that what happened

1 at the 404(b) hearing, suddenly is this witness
2 saying that what he gave that night -- that that's
3 what we need to rely on is completely misconstruing
4 the record.

5 THE COURT: I'm troubled if I'm here listening
6 to evidence at a 404(b), and Mr. Rock is confirming
7 that yeah, these are the statements. I was in a
8 slightly altered state, but they can be relied on;
9 and now it's going to be, well, they really can't
10 be relied on because I was told not to cooperate.
11 Mr. Ray was being framed or something like that.
12 That sounds like a major distinction.

13 What am I missing on that?

14 MS. POLK: Judge, first of all, I think what
15 happened at the 404(b) is taken out of context.

16 MR. KELLY: Judge, I apologize. I read it
17 word for word. It's part of the record. I'm done
18 with the personal accusations.

19 THE COURT: Well, taking out of context,
20 Mr. Kelly --

21 MR. KELLY: I read it simply for your
22 consideration as my argument. Again, if they're
23 not inconsistent, then why is an explanation being
24 proffered at this point?

25 THE COURT: Ms. Polk.

1 MS. POLK: My point is that what occurred at
2 the 404(b) was impeaching a witness with prior
3 inconsistent statements from the night of
4 October 8. That's what happened.

5 If Mr. Kelly is suggesting that the
6 testimony from the 404(b) hearing is inconsistent
7 with what it was today, I would disagree with that.

8 THE COURT: I see what Ms. Polk -- Ms. Polk is
9 saying that the 404(b) testimony is going to be
10 consistent. It's going to be consistent in that
11 regard. The only thing going to be inconsistent is
12 Mr. Rock indicating that his initial interview was
13 accurate somehow. So that seems to be the
14 distinction.

15 MS. POLK: It happened at the 404(b) hearing.
16 And Mr. Kelly can do it again here today, which is
17 contrast what he has said with what he said back on
18 the 8th. This witness told Mr. Kelly at the 404(b)
19 that he was in an altered state, talked about
20 his -- his -- what he just testified to on the
21 stand.

22 In addition to that, he will testify as
23 to the effect that the statement by Christine Jobe
24 had on his mind-set that night. What happened that
25 night, Your Honor, is a brief interview with

1 mister -- I don't believe there is inconsistent
2 statements as much as there is information not
3 given that night.

4 And what this witness will testify to is
5 several things. One is that, as the Court heard,
6 he had -- he was right there when he heard Kirby
7 Brown struggling with breathing and has struggled
8 ever since with what he did or failed to do at the
9 time. And he will tell the jury he's been working
10 through that.

11 The second explanation is that night what
12 is his state of mind and what is the effect on his
13 state of mind when Christine Jobe says, we just
14 talked to the cops. Don't talk to them. They're
15 trying to frame James Ray. That's his explanation
16 for that night, not that the statement are
17 inconsistent. It's that what he tells the cops
18 that night doesn't include what he has testified at
19 the 404(b) hearing as well as today, which is what
20 he heard inside the tent when -- about Kirby and
21 Mr. Ray's statement, leave her until the next
22 round.

23 THE COURT: What Mr. Kelly read to me seemed
24 to be pretty clearly inconsistent.

25 MS. POLK: Could Mr. Kelly -- I don't have --

1 somehow his pages aren't matching up with mine. We
2 have a different format.

3 MR. KELLY: I have the official transcript
4 from November 16, 2010.

5 THE COURT: I need to ask this too: Ms. Polk,
6 when did you learn that apparently there is some
7 assertion now that Mr. Ray -- I know it's a
8 hearsay, how many times removed. Who knows. But
9 hearsay statement by Mr. Ray, which would be a
10 statement by a defendant. When did you first learn
11 of this?

12 MS. POLK: Your Honor, first of all, there is
13 no hearsay statement by Mr. Ray.

14 THE COURT: Well, partly. What you mentioned
15 at the bench, if it's going to be that these people
16 were told to do this --

17 MS. POLK: I didn't say that. And Mr. Rock is
18 not going to testify to that.

19 THE COURT: Oh. I thought I heard that at the
20 bench.

21 MS. POLK: Mr. Kelly said that. What I told
22 the Court -- what Mr. Rock told me in the break
23 between testimony this morning, he just -- he told
24 me quickly that the -- that before that statement
25 Christine Jobe told him that the cops had just

1 interrogated her. They're trying to frame Mr. Ray,
2 and don't cooperate. Something along that line. I
3 never represented to the Court there was a
4 statement from Mr. Ray.

5 THE COURT: Okay. I understand that now.

6 MR. KELLY: Judge, what I said is an
7 implication -- an implication has been throughout
8 the course of this trial that somehow my client is
9 directing these Dream Team members, which simply
10 there is no evidence of that. It's highly
11 prejudicial.

12 And, Judge, I need to state for the
13 record the inconsistency. In addition to the one
14 about the heat feeling the same, on October 8,
15 2009, with Detective Wendy Parkison in a 22-minute
16 interview, Mr. Rock says -- the detective was
17 asking questions. They weren't having any
18 problems -- and this is page 13: They weren't
19 having problems, I mean, as far as before the sweat
20 lodge?

21 Mr. Rock says, oh. No. No. Prior to
22 that everybody was fine. Yeah. Everybody was
23 fine. Yeah.

24 Parkison says, hopefully we'll figure it
25 out.

1 Mr. Rock says, the only thing I can think
2 of is that there was some type of toxic -- you
3 know -- there was a toxin, carbon monoxide or
4 something. I don't know. Okay.

5 The detective says, did you render aid to
6 anybody?

7 He says, no.

8 And then this is the inconsistent
9 statement with his testimony today: Because, like
10 I said, once it was done, my thought process was
11 that Kirby and Sean were okay. I thought they were
12 talking all the way to the end, and Dawn told me
13 differently.

14 And my to focus was to get out of there
15 and get myself resuscitated to -- you know -- the
16 point where I could help other people. So that was
17 my focus.

18 So once I left, I went out, I knew that
19 past experience is you would get hosed off. You
20 would come to where you could get up and walk
21 around and be fine. So that was my whole focus.
22 That's when I left there. And I quote, I had no
23 idea that people around me were that badly off.

24 Judge, he has asserted the credibility of
25 that statement on November 10. He's now testifying

1 differently. You posed a question, does he need
2 time to seek the advice of counsel?

3 Based on my experience, I would say yes,
4 if now he's going to add under oath facts which are
5 material to the outcome of this case, if he is now
6 going to somehow impeach his own sworn testimony of
7 November 2010 by saying, Judge, I didn't mean that
8 I -- I was in a slightly altered state. What I
9 mean to say was I was told not to cooperate.

10 Those are serious issues for a witness
11 testifying under oath.

12 THE COURT: The implication there was I was
13 not cooperating and I didn't tell the whole story.
14 I mean, that's the implication.

15 Ms. Polk.

16 MS. POLK: Your Honor, first of all, this
17 witness is not changing anything of what mister --
18 I don't believe is changing anything of what
19 Mr. Kelly just read.

20 THE COURT: Okay. Tell me how it lines up.
21 Tell me why that's wrong, what Mr. Kelly just
22 recited is not different from talking about
23 hearing, seeing these problems and -- you know.

24 MS. POLK: It's not that it's different,
25 Your Honor. It's what he recalls today, what he's

1 testifying today, in addition to what he said.

2 What Mr. Kelly just said about his
3 impressions, how he didn't help Kirby, how he
4 thought at the time she was fine -- that would be
5 areas to cross-examine and impeach him on but not
6 necessarily so -- I'm not sure what the point is of
7 that. He can cross-examination this witness. It
8 is appropriate to confront the witness with prior
9 inconsistent statements.

10 The issue is for this witness to explain
11 his level of cooperation then and explain the
12 differences. Witnesses are allowed to explain
13 differences in testimony. And that's part of his
14 explanation.

15 And the statement made by Christine
16 Jobe -- it is admissible because of its effect on
17 the listener and why he was less cooperative that
18 night than he is today.

19 THE COURT: Well, this is only coming up now
20 because it obviously would be coming up on
21 redirect. Or actually it would come up on
22 cross-examination in all likelihood. Because the
23 pattern has been people will not answer yes or no.
24 They'll do something and then go into -- it would
25 be volunteered. That's likely the way it would

1 have turned out if Ms. Polk didn't bring it up at
2 this point.

3 So here we are.

4 MR. KELLY: I just want to point out a very,
5 very simple fact. I have presented numerous
6 individuals in Yavapai County who are charged by
7 the Yavapai County Attorney for providing false
8 information to the police officers simply by
9 providing a wrong name.

10 THE COURT: Mr. Kelly, that had occurred to
11 me.

12 MR. KELLY: And now I'm thinking after
13 listening to Ms. Polk's most resent explanation,
14 it's either he has perjured himself in front of
15 this court in November or he was presenting false
16 information to the police, Detective Parkison, back
17 on October 8. He needs counsel.

18 MS. POLK: Your Honor, I'd like to respond to
19 that.

20 MR. KELLY: Or both.

21 MS. POLK: First of all, October 8 was not a
22 sworn statement. And I -- with respect to the
23 404(b) hearing, Mr. Kelly impeached him with a
24 prior inconsistent statement. To somehow say today
25 that that is perjury or sworn testimony, I fail to

1 see that leap.

2 He confronted him with prior inconsistent
3 statements. And that's what he did. And to say
4 that a witness on the stand admitting or agreeing
5 that yes, that was my statement then, which is --
6 that's how you impeach -- to say somehow that that
7 becomes perjury, I just don't follow that.

8 THE COURT: But the explanation at one point,
9 I guess, was it could be somewhat of an altered
10 state that made it a little different, as opposed
11 to don't cooperate. And that's the reason why
12 it's -- you don't see a distinction between those
13 two answers?

14 MS. POLK: Your Honor, this witness will talk
15 about his state of mind and being altered and being
16 upset. He's already done that. In addition to
17 that, he was warned by Christine Jobe not to
18 cooperate because they're trying --

19 THE COURT: But he did need to mention that to
20 Mr. Kelly when there was impeachment going on at
21 the 404(b).

22 MS. POLK: And, Your Honor, if you look at the
23 record, there is no opportunity to explain. The
24 way Mr. Kelly impeached was simply yes, yes, no,
25 no. There was no question from Mr. Kelly, well,

1 why did you testify differently today than you did
2 back then?

3 THE COURT: Here's what I'm going to say:
4 Normally at trial this is -- this is something
5 where it just -- it's stated and there is
6 impeachment, and that's how it proceeds. What I'm
7 concerned with here is it again comes up though --
8 as just mentioned at a break, he says here's
9 another reason, I guess. Here's another reason why
10 there could be some discrepancies. I was told not
11 to cooperate. And that's the first time you hear
12 this, essentially, today.

13 Is that right?

14 MS. POLK: Your Honor, it is. But I -- the
15 way the Court just said that in a very casual tone,
16 I think, conflicts with this witness and his
17 demeanor on the stand. And what his testimony will
18 be is he will talk about his efforts to work
19 through what happened and get to where he is today
20 where he can talk about it.

21 And it's not casual. It's -- as you've
22 seen through many witnesses, many witnesses are
23 suffering, significantly suffering, because of what
24 they went through and because of their second
25 guessing of what they did or failed to do.

1 And this is another witness who is right
2 next to somebody, two people, actually, who pass
3 away, and who will testify about his struggle to
4 deal with his actions or his inactions. And he
5 will talk about how long it took him to even be
6 able to talk about it. It's a long period of time
7 before he can even talk about what he's been able
8 to talk about today. And I think the Court saw
9 from his demeanor on the stand this is not an easy
10 thing for Mr. Rock.

11 Part of his talking about it is
12 additional information that comes out. And that's
13 not unusual. When you interview somebody, you
14 don't find out any detail. And this is not
15 something we knew before, but he offered it. And
16 clearly it's relevant.

17 He's not going to say I didn't cooperate
18 because they told me not to. But it is another
19 factor that went into what was going on that night.
20 The Court knows that there were lots of interviews
21 going on. The interviews were very brief. Through
22 many witnesses the defense has impeached them with
23 things they said on the stand today that they did
24 not say back then.

25 And this is another witness who a brief

1 statement was taken from. He was in probably still
2 a state of shock. He was very emotional. He was,
3 in his words, still -- I can't remember what he
4 said. Bewildered or overwhelmed. In addition he's
5 had two other Dream Team members come up to him and
6 say, don't cooperate. They're trying to frame
7 James Ray.

8 All of that is his explanation for why
9 today he's testifying about details not offered
10 that night.

11 THE COURT: Another instance of we go to far
12 in characterizing my demeanor. I don't take
13 anything about this case casually, and certainly
14 not this issue. I do not.

15 Mr. Kelly.

16 MR. KELLY: Judge, just listen to our elected
17 county attorney. I believe provided a defense to
18 false information to a police officer, if it's not
19 a sworn statement. Or if a person is suffering
20 some type of emotional trauma when they're
21 interviewed by the investigator.

22 This issue is becoming more problematic
23 when the county attorney argues that the crime of
24 providing false information to a police officer is
25 justified because of your emotional state or that

1 it's not sworn. You just can't exist both ways.

2 And, again, I would assert that either
3 Mr. Rock was not telling the truth. And I don't
4 know which it is. I don't represent him. But he's
5 either not being truthful in front of this court
6 under oath in November or in May or, alternatively,
7 providing false information on October 8.

8 And I submit, Judge, that he has the
9 right to invoke, that he has the right to counsel,
10 and that we have a bigger problem now given the
11 explanation by the State of Arizona as to why we
12 should continue with his testimony. We're actually
13 thinking it should be stricken, I mean, if it's --
14 reliability isn't a question.

15 THE COURT: And I've heard excerpts. It's a
16 lot of information for me to try to think back to
17 the 404(b) in November, and then Mr. Kelly is
18 reading excerpts, and I'm taking -- I don't know if
19 they're avowals exactly. I'm taking statements
20 about what this is concerned.

21 Ms. Polk, please feel free to respond to
22 what Mr. Kelly has indicated. That's certainly a
23 thought that occurs to me, that there has been this
24 type of information given. And because there is
25 someone is upset -- you know -- I -- there's a lot

1 of things that can go into those considerations. I
2 certainly understand that.

3 MR. KELLY: Your Honor, may I say something
4 very, very briefly?

5 THE COURT: I want Ms. Polk to be able to
6 respond. Yes, Mr. Kelly.

7 MR. KELLY: The transcript that we referred to
8 is marked for purposes of identification as 697.

9 THE COURT: Ms. Polk.

10 MS. POLK: Your Honor, I continue to struggle
11 with how a brief statement that doesn't -- not
12 include full information suddenly propels itself
13 into a case for perjury later. This is not the
14 first witness who a brief statement was taken from
15 that night who does not disclose everything. And
16 who when law enforcement goes back, does a thorough
17 interview, then it all gets disclosed.

18 THE COURT: Ms. Polk, sorry to interrupt. How
19 often is the reason given that and the reason I
20 didn't give the full time is because someone
21 arguably aligned with the other side told me --
22 told me not to? You know? And then it comes up a
23 year and a half later at trial --

24 MS. POLK: It's not coming up a year and a
25 half. His full statement came up in September

1 of 2010. It was recorded. It was provided to the
2 defense. They've had the full statement since
3 then. And they had it before the 404(b) hearing.

4 What has come up today is some more
5 information about what was going on that night.
6 And again, Your Honor, I would point out that this
7 is another witness that for strategic reasons the
8 defense has chosen not to interview.

9 If they had interviewed these witnesses,
10 that's the time when you're not in front of jury,
11 and that's the time you ask the question that is
12 not asked at the 404(b), which is why didn't you?
13 What else was going on? Who had you talk to?

14 None of that went on. And the defense
15 had the opportunity to do it. They chose not to do
16 it and now today suddenly are trying to keep out
17 this -- the issue is what is the explanation for
18 why he gave additional information in September
19 of 2010 that he didn't give the year before?
20 That's the issue.

21 THE COURT: November of 2010.

22 MS. POLK: September of 2010 is when he's
23 interviewed by Detective Diskin. The incident
24 happened in October of 2009. 11 months later there
25 is a full interview taken, and that's supplied to

1 the defense. Since then the defense has had all
2 this information.

3 The additional piece is why didn't -- is
4 what he told me today, that he had been told by
5 Christine Jobe that they're trying to frame James
6 Ray. That's the additional information. All the
7 other information that he testified to today was
8 about -- was provided to the defense in that
9 interview.

10 And, again, to the extent there might be
11 a few details, the defense chose not to interview
12 to flesh out whatever details there are. But there
13 is nothing inconsistent today with what he said in
14 September of 2010.

15 THE COURT: And November of 2010 also?

16 MS. POLK: And when he interviewed -- when he
17 testified at the 404(b). Your Honor, the 404(b),
18 that was limited testimony. As the Court will
19 recall, the defense was objecting, and the Court
20 allowed only brief testimony of what happened in
21 2009. He was -- the 404(b) he was testifying
22 about 2008.

23 THE COURT: Well, again, without looking at
24 the actual documents and what's said.

25 But, Mr. Kelly, it's back to the last

1 time when I brought this up. It's not offering a
2 full explanation, Ms. Polk asserting that it's --
3 the discrepancy is not offering the full
4 explanation for the difference between 2009
5 and 2010, what's said in those two different times.

6 MR. KELLY: Judge, it's just so disingenuous
7 to say that this October 8, 2009, statement is not
8 inconsistent. If that's the case, then the
9 proffered evidence is not relevant. If it is
10 inconsistent, then we have the myriad of problems
11 that I've previously described. I mean, that's the
12 simple truth. That's logic. It's highly
13 inconsistent. Heat level the same. Your response,
14 why I didn't rendered aid, as I read.

15 THE COURT: The September 2010, then the
16 distinction are made, is what Ms. Polk is saying.
17 So --

18 MR. KELLY: Judge, in September -- I apologize
19 for interrupting. But I have an official copy of
20 the transcript. I've read it word for word.
21 Contrary to what Ms. Polk alleges, there was an
22 extensive discussion. In fact, the entire page 12
23 and part of page 13 until the final question, which
24 was, Mr. Rock, were you in an altered state when
25 those statements were made?

1 Yeah. I was slightly altered.

2 And we're talking October 8, 2009, not
3 September 2010.

4 Does that mean that we cannot rely on the
5 content or substance?

6 No, it doesn't. Because it's as accurate
7 as I can remember.

8 THE COURT: And that's from when?

9 MR. KELLY: September -- that's in this court
10 in November of 2010 in your presence, Judge. So in
11 response to why don't we interview him, I generally
12 take sworn testimony as the truth. And I thought
13 we could rely on that.

14 Now everything is different, and there is
15 the added complication of providing -- if that's
16 the explanation that the government believes, then
17 I think what he's trying to say in a very polite
18 way is I lied to the police back in October
19 of 2009. And I believe he needs counsel.
20 Alternatively, if he wasn't telling you the truth
21 in October -- excuse me -- November of 2010, he
22 needs counsel.

23 THE COURT: And Ms. Polk is saying you had an
24 interview that was conducted in September a couple
25 months earlier where you knew that what he was

1 saying right there wasn't consistent with what he
2 had say just a couple months earlier. That's what
3 Ms. Polk is saying. The September interview,
4 basically, straightens that out, and the
5 discrepancies appear in September.

6 MR. KELLY: Judge, I can assert that every
7 time Mr. Rock provides a statement, which are
8 numerous, including the ones played to the media,
9 they're inconsistent.

10 What we're talking about now is an
11 interview to a police officer and sworn testimony
12 on the witness stand and now an explanation,
13 purported explanation, as to why those differences
14 exist. That's a far different situation than
15 simply having two inconsistent statements, which
16 over time could be explained by, well, I spoke to
17 my other warrior groups and remembered this.

18 What I've laid out is -- are the actual
19 words on those particular dates that provide the
20 problem. And, furthermore, Judge, in September
21 of 2010 he didn't mention this new information we
22 learned today.

23 MS. POLK: Judge, in September 2010 Mr. Rock
24 did a full interview with all the information he's
25 testified so far in this trial. The only new

1 information is what I learned in the break, which
2 is that he had been told by Christine Jobe that
3 that -- that they were trying to frame Mr. Ray and
4 not to cooperate.

5 But when that 404(b) hearing was
6 conducted, the defense had a very lengthy
7 transcript and audio of the interview that was in
8 September of 2010 when all that information was
9 given.

10 I'll just leave it at that. I don't
11 quite follow what Mr. Kelly is trying to argue. He
12 impeaches witnesses with inconsistent statements.
13 He did it at the 404(b). And that's what he keeps
14 referring to.

15 At the time that witness had testified
16 about -- consistent with how he testified today.
17 And Mr. Kelly impeached him with that statement
18 from October 8, just as he has a right to do today.

19 I'm not following this issue suddenly
20 that we have perjury when this witness testified in
21 November at the 404(b) hearing consistent with what
22 he's testified today. Now, not in such detail
23 because I wasn't allowed to ask him the detail.
24 But he's testified consistent with what is in the
25 full interview provided on September -- in

1 September of 2010 and provided to the defense.

2 MR. KELLY: Let me be more brief, more clear.
3 It's a Fifth Amendment issue. He's telling us --
4 he's telling the Yavapai County Attorney herself
5 that he intentionally lied to a police officer on
6 October 8, 2009. Given that, Judge, he has rights.
7 He needs counsel.

8 MS. POLK: Your Honor, that's a
9 mischaracterization. Mr. Rock has never told
10 anybody that he intentionally lied.

11 MR. KELLY: Judge, when somebody says, don't
12 tell the truth. We're protecting James Ray, that's
13 intent.

14 THE COURT: And I'm -- in these situations
15 it's necessary to look at the interest in Mr. Rock,
16 Ms. Polk, at this point. And you're putting me in
17 a very awkward position. County attorney. You've
18 been in that position for over 11 years almost.
19 And I believe strongly in the separation of powers,
20 and I don't like to indicate what should be done.

21 And, again, I'm at the real disadvantage
22 of hearing all of this now with interviews from
23 here and statements there, two different sets of
24 sworn testimony at this time.

25 But just from looking at it, as a judge,

1 and hearing this and someone coming forward right
2 now and saying, by the way, I didn't give the whole
3 story back whenever -- you know -- no matter what
4 kind of a case.

5 But in this particular matter -- and this
6 is why I didn't. If that's the gist of it, I just
7 have a concern about that. And I'm almost stepping
8 aside, really stepping aside from this case, just
9 what happens when you have a witness in that
10 position.

11 MS. POLK: Your Honor, this witness -- it's
12 not new information that he didn't give a full
13 story that night. That has been known since
14 September when he gave the full interview.

15 THE COURT: But that doesn't change the fact
16 that -- okay. I see. So you're saying if there
17 has been harm done, it's already done. That's what
18 you're saying.

19 MS. POLK: This witness, like many witnesses,
20 gave a more complete statement later. I fail to
21 see how that is any different than some of the
22 other witnesses who that night gave brief
23 statements and then later gave a more complete
24 statement.

25 This witness gave a complete statement in

1 September of 2010, testified at a hearing in
2 November of 2010 under oath. This issue suddenly
3 that's being raised by Mr. Kelly is not making
4 sense to me, quite frankly. This witness has
5 testified under oath. He's been confronted with
6 this prior inconsistent -- what Mr. Kelly
7 characterized as inconsistent statements between
8 that night and his testimony in November. And the
9 defense has had that full interview since
10 September, a month before that hearing.

11 Why suddenly is there this issue, then,
12 when this witness has already testified under oath,
13 has already been confronted with those inconsistent
14 statements -- what is different today than what was
15 different in 2010 when he testified under oath?
16 The only thing that's different now is this new
17 information as to what he had been told by
18 Christine Jobe.

19 That is what it is. That doesn't change
20 what he testified to in November. It doesn't
21 testify -- It doesn't change that he's already been
22 impeached or confronted with the fact that he gave
23 a different statement or an incomplete statement in
24 October of 2009. None of that is changed. He's
25 testified under oath.

1 So I'm struggling still to see what this
2 issue is that Mr. Kelly wants to raise when this
3 witness has testified under oath, been confronted
4 with the fact that he had given a more complete
5 statement in September than he did the year before.

6 MR. KELLY: Judge, I didn't raise the issue.
7 We're simply dealing with a witness who apparently
8 is willing to testify that he lied to the police on
9 October 8. And his lie he may not use those brief,
10 to-the-point words. But he's going to say he did
11 not provide truthful information because we were
12 trying to protect Mr. Ray. That's the problem. He
13 needs counsel.

14 And we didn't know about that until --
15 you and I did not know about it until a half hour
16 ago.

17 THE COURT: Again, I haven't seen these
18 interviews.

19 (Pause in proceedings.)

20 THE REPORTER: Let's see where we left off.

21 THE COURT: I haven't seen these interviews.

22 Ms. Polk.

23 MS. POLK: Your Honor, again, this witness --
24 there are some things that are being said that I
25 don't believe this witness will say. All I know is

1 that he said he was told by Christine Jobe and
2 another Dream Team member that they had been
3 interrogated by the police, that the police are
4 were trying to frame Mr. Ray and not to cooperate.

5 I don't know how that affected what he
6 did. I don't know what he will say, if he felt
7 that he was protecting Mr. Ray or not. That's
8 further -- more information than I learned. So I
9 don't know if Mr. Rock would say I was trying to
10 protect Mr. Ray when I gave that statement.

11 The record needs to be clear that I don't
12 know that Mr. Rock would say that far. What it
13 would be relevant to is his state of mind, though,
14 when he is giving the statement that night.

15 And, again, Mr. Kelly keeps suggesting
16 that there was some knowing misrepresentation that
17 night to the police. What we know is that there is
18 more information given later. That's what we know.
19 And, again, that's what many witnesses, several
20 witnesses, have done in this trial is brief
21 statement were given early, and that additional
22 information was brought forth later.

23 I do know that Mr. Rock will testify
24 about his personal struggle to even be able to talk
25 about the events of that night and what he

1 personally heard and observed and that that -- he
2 will talk about his state of mind.

3 I'm just thinking of the perjury and the
4 elements of knowing and when somebody is under
5 mental duress, as Mr. Rock was that night, as he
6 will testify to. And, again, of course, it wasn't
7 even a statement under oath. Those are just all
8 thoughts I'm throwing out there.

9 But what I keep going back to is he made
10 a brief statement that night. He made a full
11 statement in September of 2010. That was provided
12 to the defense. They had that full statement.
13 When Mr. Rock testified November 2010, they
14 confronted him with inconsistent statements from
15 that night. And here we are today again under oath
16 in a similar proceeding with this witness not
17 testifying differently in any way than he testified
18 to at the hearing -- at the 404(b) hearing.

19 THE COURT: Well, he'll continue with his
20 testimony. He can be impeached, Ms. Polk. I'm not
21 going to have time in an hour to sort this out.
22 I'm going to simply say this: And that is -- this
23 isn't something for advocacy -- and thinking about
24 potential defenses, it's without me being -- I'm
25 going on avowals from both sides, the defense

1 avowing to me this is a problem. This person could
2 be looking at possible perjury issues or at least
3 obstructing. Well, false reporting or something of
4 that nature.

5 You're saying no, that that's not -- this
6 is not the problem. This is just the kind of thing
7 we see. And I can't do an independent
8 investigation and --

9 Mr. Kelly.

10 MR. KELLY: Judge, I would, for the record,
11 point to the transcript of the proceedings from
12 November 2010, November 16, Exhibit 697, which has
13 been marked for purposes of identification and not
14 admitted in this trial and Ms. Polk's
15 representations as to the explanation provided by
16 Mr. Rock as to the inconsistency of his October 8,
17 2009, statement, Exhibit 697.

18 Based on that, Judge, as an officer of
19 the Court, as a member of the bar, I'm making a
20 motion that Mr. Rock be provided counsel by the
21 Yavapai County Public Defender's Office before we
22 proceed any further. And I believe I'm obligated
23 to do that.

24 I have a concern if the Yavapai County
25 Attorney, the chief prosecutor for Yavapai County,

1 is going to provide him legal advice at this point.

2 I believe that's improper.

3 THE COURT: Well --

4 MR. KELLY: I agree with you --

5 THE COURT: I've got a motion before me, an
6 avowal, an attorney going really on the line saying
7 this rises to this point, from an objective
8 assessment.

9 That's what I'm being told, Mr. Kelly.

10 This is an objective -- not an adversarial
11 assessment, but an objective assessment.

12 MR. KELLY: I believe it's from the
13 perspective from Mr. Rock and what I've heard those
14 exhibits, as well as I've heard from Ms. Polk.
15 That's all I know. Based on that, he needs to
16 consult with an attorney. And I don't believe a
17 brief recess in this trial -- we have our schedule
18 outlined. We're still going to complete it by
19 June 23.

20 I do realize the inconvenience to the
21 jury. And I agree with the Court that I don't
22 believe it's your determination solely. I don't
23 believe it's mine.

24 Trust me. I'm going to cross-examine
25 him. There is no love lost between me and

1 Mr. Rock, as exemplified by the November hearing.
2 As an attorney, I think he needs advice.

3 THE COURT: Ms. Polk, you're saying I should
4 disregard this avowal if coming as an adversary
5 only. And as a neutral person looking at the
6 possible interest of this witness, what do you have
7 to say?

8 MS. POLK: I would ask Mr. Kelly to explain to
9 the Court and counsel what is the difference today
10 in this hearing and the 404(b) hearing?

11 THE COURT: Mr. Kelly?

12 MR. KELLY: The inference is the
13 representation by Ms. Polk that the witness has an
14 explanation as to his statement given to
15 Detective Parkison on October 8, 2009. And that
16 explanation was do not cooperate. The reason those
17 statements I pointed out are not true was because I
18 was trying to protect Mr. Ray.

19 If that's the case, then he has committed
20 the crime of providing false information to the
21 police officer.

22 And I've represented a bunch of people
23 charged in this county for simply saying, what was
24 your name, and they give a false name, and they're
25 charged. And that statement is not under oath, and

1 no one cares about their emotional state or the
2 trauma associated with a particular incident before
3 they give the false information. Those simply are
4 not legal defenses.

5 Now, I am not -- I don't want the Court
6 to misunderstand me. I have no idea because I
7 don't know what his answer is going to be. But at
8 this point in time just listening to the
9 explanation of Ms. Polk, I have a concern. And
10 I've already explained it. But I think he needs to
11 consult with an attorney before he under oath
12 provides an explanation.

13 You bet you I can impeach him. But it's
14 a bigger issue than that.

15 MS. POLK: And, again, Mr. Kelly has made two
16 representations to the Court that I have not. He
17 went further than the information I have about what
18 Mr. Rock would say. And if that's the basis for
19 him making the recommendation to the Court, I would
20 suggest that maybe Mr. Kelly needs to interview
21 Mr. Rock and find out more about that information
22 rather than this conjecture about what the
23 witness's motives were when he gave information to
24 the cops that night.

25 THE COURT: Ms. Polk, another thing that

1 occurs to me. You indicated you don't know exactly
2 what Mr. Rock might say.

3 MS. POLK: No, I don't.

4 THE COURT: Well, then how can he even proceed
5 without talking to an attorney? If he might say
6 something that really creates a problem, doesn't he
7 need to do that?

8 MS. POLK: What is the issue, Your Honor, that
9 you think this witness -- are you concerned this
10 witness is going to say he deliberately lied to the
11 police?

12 THE COURT: I don't know.

13 MS. POLK: I don't know that either. I have
14 not --

15 THE COURT: If we don't know that and he --
16 shouldn't he have counsel to discuss those things?
17 It seems he should.

18 MS. POLK: Is that -- can I ask? Is that the
19 one issue you're concerned about is this witness
20 would be stating that he deliberately lied to the
21 police? Because, again, Your Honor, I go back to
22 the fact that we have a full interview. And the
23 difference between the interview that night and
24 what is told later is that it's much more complete.
25 There are little things that Mr. Kelly will impeach

1 on --

2 THE COURT: Wait a minute, Ms. Polk. You're
3 saying the interview is a little more complete than
4 the October interview? Is that what you're saying?

5 MS. POLK: I'm saying that in October it's a
6 brief interview --

7 THE COURT: But the statements made are rather
8 different, I mean, completely.

9 MS. POLK: Which statements are you referring
10 to?

11 THE COURT: Mr. Kelly comparing -- as I
12 recall, comparing, comparison --

13 MR. KELLY: The heat.

14 THE COURT: He mentioned -- well, that's the
15 one I remember right offhand is just that
16 comparison.

17 Mr. Kelly, what were the others?

18 MR. KELLY: Judge, there were two. And just
19 to summarize, one is he said, the heat was no
20 different between the two years. Quite different
21 than his testimony today.

22 The second is that I had no idea that
23 people around me were badly off, why he didn't
24 render aid. Completely different --

25 MS. POLK: Can I have a reference --

1 MR. KELLY: Page 13.

2 THE COURT: So anyway, in any event --

3 MR. KELLY: Again, the issue, Judge, from a
4 legal perspective, not this trial, is the county
5 attorney has certain obligations, ethical
6 obligations.

7 THE COURT: Mr. Kelly, you've made them.

8 MR. KELLY: So if she doesn't ask Mr. Rock --
9 I'm just concerned for this witness. If she asks
10 Mr. Rock, he provides some answer, it's going to
11 place her in a very awkward position depending on
12 the response.

13 That's -- I'm just looking at it
14 objectively. It seems to me he needs to consult
15 with an attorney in this regard. That's my point.
16 I don't want to delay this trial, but I just see a
17 problem.

18 MS. POLK: Your Honor, again, I would ask what
19 is different today than was different in 2010 at
20 the 404(b) hearing? The facts are the facts. That
21 conversation between Mr. Rock and Christine Jobe
22 wasn't known. But that fact exists. The full
23 interview had been provided to the defense. They
24 had that at their disposal when they confronted him
25 at the 404(b) hearing. So how is that different

1 today?

2 MR. KELLY: Judge, the difference is what he
3 told Ms. Polk in the hallway, which she then kindly
4 approach the bench to advise us of at the start of
5 this. That's the difference.

6 THE COURT: We're going to reassemble at 1:15.
7 (Recess.)

8 (Mr. Rock returns to the courtroom.)

9 THE COURT: The record will show the presence
10 of Mr. Ray, the attorneys. Mr. Rock is on the
11 witness stand.

12 THE WITNESS: Yes.

13 THE COURT: Mr. Rock, in listening to your
14 testimony and having a bench conference, which I'm
15 sure you noted, I had a concern about your
16 testimony in this respect, that there might be some
17 legal effect that could impact on you.

18 So what I have done is I've appointed an
19 attorney who will be consulting with you -- and
20 this would not be at cost to you -- just about
21 possible concerns.

22 I don't want you to say anything about
23 this. I'm just telling you what's going on. I
24 want you to have some idea.

25 So what I'm going to ask at this time --

1 just so you can anticipate, you will be consulting
2 with an attorney here shortly. But I'm going to
3 ask if you will excuse yourself.

4 I think, Ms. Rybar, you have a separate
5 room; correct?

6 If you would wait there. I do need to
7 speak with the lawyers briefly and then they will
8 be getting with you.

9 Okay?

10 THE WITNESS: Okay.

11 THE COURT: Thank you, sir.

12 THE WITNESS: Thank you.

13 (Mr. Rock leaves the courtroom.)

14 (Mr. Launder enters the courtroom.)

15 THE COURT: Mr. Launder is in the courtroom.

16 I want to catch up on the record where
17 things are. The attorneys, both sides, agree that
18 it's appropriate to appoint counsel to consult
19 regarding the issue.

20 Correct, Ms. Polk?

21 MS. POLK: Yes, Your Honor.

22 THE COURT: Mr. Kelly?

23 MR. KELLY: Yes, Judge.

24 THE COURT: The other thing -- I, of course,
25 concur. That's been done. Mr. Launder has been

1 kind enough to undertake that at this point. And
2 he is going to assist in that regard.

3 The process I think should be this: I'm
4 asking the attorneys from both sides to brief
5 Mr. Launders, give him background before he talks
6 to Mr. Rock. And then we will just have to proceed
7 from there.

8 If Mr. Rock feels he's fully advised,
9 Mr. Launders is comfortable and the matter is going
10 to proceed -- it's not going to proceed today. I
11 also want on the record that pursuant to agreement
12 of counsel, Ms. Rybar has informed the jury that
13 they are excused and will return next Wednesday.

14 Correct?

15 THE BAILIFF: Yes.

16 THE COURT: Counsel, that was discussed. No
17 one is disagreeing. I want everything on the
18 record just to catch up. We were not discussing
19 substantive matters about the case in any way.
20 Really had to do with this question with Mr. Rock
21 that came up.

22 But, in any event, I anticipate there
23 would be a record made. If Mr. Rock wants to
24 proceed, there would be a record of that obviously.

25 I'd like, then, whoever wants to --

1 somebody from both sides. I'm asking it be in that
2 manner. Meet with Mr. Launders so he can talk to
3 Mr. Rock.

4 MR. KELLY: Judge, what I would suggest just
5 in terms to expedite the matter is to allow
6 Mr. Launders to meet with us, I think, in about 10
7 or 15 minutes with the court exhibits. I could
8 outline what we perceive the problem to be. And
9 with those materials and that information, meet
10 with Bill and Sheila, get their perspective on it.
11 And then perhaps if he has any additional follow-up
12 questions, we'll remain here to answer those.

13 THE COURT: Okay. I'd like somebody to keep
14 Mr. Rock apprised just timewise. Have the courtesy
15 for him so he's not just back there wondering when
16 is someone going to be talking to me. So I think
17 as officers of the Court, somebody can at least let
18 him know that the attorneys are still talking.

19 MR. KELLY: Perhaps this would be a good time
20 for Bob Launders to introduce himself.

21 THE COURT: We'll get there.

22 MR. KELLY: Okay. Just a suggestion.

23 THE COURT: Mr. Launders, I understand you're
24 coming up here on very short notice. We appreciate
25 that very much. All of us do.

1 Did you have any thoughts?

2 MR. LAUNDERS: The only thought I have, I
3 don't know the breadth of this potential issue. So
4 I can't tell you how far I can go in terms of what
5 you're asking me to do. So I will listen to what
6 everybody says and draw my own conclusion.

7 THE COURT: Okay. Well, you can start meeting
8 with Mr. Launders, then, Counsel. And I
9 understand that -- well, I was the one that did the
10 introduction we discussed doing in another fashion.
11 But I think that the attorneys can accompany
12 Mr. Launders to at least be introduced to his
13 client in this very specialized area here.

14 Okay?

15 Thank you. We're in recess.

16 (Recess.)

17 (Mr. Rock returns to the courtroom.)

18 The record will show the presence of
19 Mr. Ray and his attorneys, Mr. Kelly, Mr. Li;
20 Ms. Polk and Mr. Hughes for the state.
21 Mr. Launders is here. I think Mr. Rock is present.
22 I see him as well.

23 Counsel, let me make one thing. I have
24 appointed Robert Launders to consult with Mr. Rock,
25 as discussed on the record. But I want to make it

1 clear that I did make that court appointment for
2 that purpose.

3 Counsel?

4 MR. LAUNDERS: Your Honor, if I can be heard?

5 THE COURT: Yes.

6 MR. LAUNDERS: Both the state and the defense
7 have suggested that I look at previous statements
8 attributed to Mr. Rock as well as testimony that
9 was obtained before my involvement to properly
10 address someone on these issues. And I'm going to
11 ask for the opportunity to do that.

12 And then I'm asking the Court, I guess,
13 to say when you want us to come back and do that.
14 Right now I don't have the basis to properly advise
15 my client.

16 THE COURT: Do you have transcripts of what
17 you need?

18 MR. LAUNDERS: I'm going to get, I've been
19 told, all the information I need before I leave
20 today.

21 THE COURT: I know that Mina's going to be
22 preparing the court testimony. The other things,
23 you're going to get that.

24 It would be on Tuesday.

25 MR. LAUNDERS: If that's okay with the Court,

1 Your Honor, that's fine with me.

2 THE COURT: Do you want me to set an
3 appointment? Of course, there will be a place
4 available here where you can talk to Mr. Rock.

5 MR. LAUNDERS: Mr. Rock and I can arrange -- I
6 can arrange with my client where we're going to
7 meet before we come back to court.

8 THE COURT: I would ask that that be done
9 possible Tuesday morning. And then that way I can
10 at least have a telephonic conference with the
11 parties, with the attorneys, early afternoon on
12 Tuesday.

13 MR. LAUNDERS: Yes, sir. That's fine.

14 THE COURT: Okay.

15 Ms. Polk.

16 MS. POLK: Your Honor, I just want to offer
17 this information to the Court: That Mr. Rock
18 resides in Phoenix and is employed down there. He
19 does have an attorney. But just to request that
20 they work with Mr. Rock and his work schedule,
21 whatever is needed.

22 THE COURT: Thank you.

23 Mr. Kelly?

24 MR. KELLY: Judge, we'll be available when you
25 tell us to be.

1 THE COURT: Okay. I want to be -- well, I
2 haven't had any trouble getting in touch with
3 people. So I'm going to ask people to be generally
4 available Tuesday telephonically, anticipating, I
5 hope, a conference with the parties, attorneys, in
6 the early afternoon on Tuesday. 1:30 to 2:00 I
7 hope.

8 MR. LAUNDERS: Do you want Mr. Rock to be
9 present at that hearing? He's represented by
10 counsel.

11 THE COURT: Mr. Rock should be available.

12 MR. LAUNDERS: Telephone is okay?

13 THE COURT: It's okay with me. Anybody --

14 MR. KELLY: I have no objection.

15 THE COURT: Ms. Polk?

16 MS. POLK: No objection.

17 THE COURT: Anything else?

18 MS. POLK: Yes, Your Honor. I just wanted to
19 put on the record that the state had offered use
20 immunity when we met with Mr. Launders.

21 THE COURT: Okay.

22 MR. LAUNDERS: Those two words were
23 communicated to me.

24 THE COURT: You were aware of that, Mr. Kelly?

25 MR. KELLY: No. I am now. But I wasn't.

1 THE COURT: Okay.

2 MS. POLK: That's why I wanted to make a
3 record of it.

4 Judge, we do have a few other issues to
5 raise if the Court has time.

6 THE COURT: We can do that. Does this involve
7 Mr. Rock or Mr. Launders?

8 MS. POLK: No.

9 THE COURT: Mr. Launders, Mr. Rock, it's
10 probably best that Mr. Rock not be in the courtroom
11 as we're going to discuss unrelated legal matters.

12 Thank you, Mr. Launders.

13 MR. LAUNDERS: Thank you, Your Honor.

14 (Mr. Rock leaves the courtroom.)

15 THE COURT: Mr. Rock has left the courtroom.

16 Ms. Polk.

17 MS. POLK: Judge, the three issues that I
18 have, one has to do with substituting exhibits.
19 And counsel has agreed to that. The second issue
20 is to correct on the record something I said about
21 Fawn Foster. And the third is the Rule 20
22 scheduling. I don't know what order the Court
23 wants to take these in.

24 THE COURT: Let's take the stipulation up
25 first, please.

1 MS. POLK: We have a number of photographs
2 that we went back and printed better copies of.
3 Defense counsel has looked at them and agrees to
4 it.

5 Do you want me to read each exhibit
6 number?

7 THE COURT: Are they sequentially now with new
8 numbers?

9 Rhondi, are they marked yet?

10 I see. They're going to be substituted
11 with the old numbers. What are the numbers?

12 And, Mr. Kelly, if you have your list
13 handy.

14 MR. KELLY: I don't have a list, but I'll be
15 listening.

16 THE COURT: Okay.

17 MS. POLK: 566, 567, 568, 569, 570, 571, 572,
18 573, 574, 578, 496, 497, 503, 526, 530, 531, 532,
19 545, 546, 547, 548, 549, 550, 938, 939, 940, 941,
20 943, 942, 944, and 949.

21 THE COURT: Okay. Here's what I have.

22 Of course, Mr. Kelly, I'll just ask that
23 you look at the actual physical exhibits. If
24 there's any discrepancy, we'll clear that up before
25 the testimony starts again.

1 But the stipulation I have is as follows,
2 the following exhibit numbers will remain -- will
3 be the same exhibit numbers. However, a better
4 image will be provided for these numbers: 566
5 through 570 inclusive, 571 through 574 inclusive,
6 578, 496 and 497, 545 through 550 inclusive, 503,
7 526, 530 through 532 inclusive, 938 through 944
8 inclusive, and 949.

9 So, again, we can double-check that.

10 And, Ms. Polk, whatever other issue you
11 want to take up.

12 MS. POLK: This morning, Your Honor, when we
13 discussed the proposed testimony of Fawn Foster, I
14 had told the Court that she had participated in a
15 sweat lodge ceremony in October of 2008 with 10
16 people conducted by Healing Wolf.

17 We went back and we found the report.
18 And this report is dated -- it's an interview by
19 Detective Poling on October 26 of 2009. And it's
20 Bates 0095, where Fawn states that she has been in
21 this exact lodge but during a different sweat other
22 than James Ray, four beautiful rounds. She said
23 she enjoyed it with 50 to 60 other people. She did
24 not have any problem breathing. It was not a James
25 Ray event. This event was held by Singing Bear

1 last year.

2 And, Your Honor, when I look at the
3 history of sweat lodge ceremonies at Angel Valley
4 that I referenced this morning, there were two
5 ceremonies in October of 2008. And the one held by
6 Singing Bear, this reference in this report was --
7 it had -- this exhibit says 50 guests. And it was
8 a ceremony held by Singing -- David Singing Bear.

9 This morning when we talked about it, I
10 believe it was the other one with 10 people. In
11 fact it, was this one with a larger group of
12 people.

13 THE COURT: Thank you for correcting that. I
14 don't want to open up that argument again at this
15 time.

16 The third issue?

17 MS. POLK: The third issue is Rule 20
18 scheduling. I thought that the Court -- yesterday
19 when we left, I thought we would be discussing this
20 morning -- that was the scheduling issue we were
21 going to discuss.

22 And if not -- Your Honor, what I was
23 going to propose is that assuming the state wraps
24 up by next Friday, that the defense provide their
25 written Rule 20 on Friday, that the state would

1 have the weekend then to file -- work on a
2 response, that we would file it Monday by
3 5:00 o'clock and then on Tuesday argue it. And
4 then the defense, assuming we're moving forward,
5 could start their case on Wednesday.

6 The second request that I have is if the
7 defense is going to cite to any testimony and
8 provide any transcript references, that they
9 provide -- that they attach the full transcript for
10 that witness's testimony.

11 THE COURT: Mr. Kelly, Mr. Li, Ms. Do?

12 MR. KELLY: Judge, in regards to the
13 scheduling, we anticipate that we will file the
14 written Rule 20 motion next Friday if that, in
15 fact, is the final day of the testimony in the
16 state's case in chief.

17 We also anticipate that there are
18 significant issues relating to Rule 20 and whether
19 there is substantial evidence that elements of the
20 crime have been established. In other words, I
21 guess what I'm trying to emphasize, Judge, is that
22 we believe there is some legal issues that are
23 going to take some time to resolve. In other
24 words, that it is a well thought out, well briefed
25 and will be well argued by Mr. Li Rule 20 that may

1 be dispositive in this case.

2 So we don't have an objection with this
3 schedule. I understand the government needs time
4 to respond. I also have not consulted with Luis.
5 But I don't believe it's a problem attaching the
6 complete transcript versus portions for the Court's
7 consideration to the motion itself.

8 Ms. Seifter has been working on it, so I
9 don't know how much reference there is to actual
10 testimony in terms of exhibit attachments. That's
11 kind of common sense. I do believe obviously it's
12 a big issue. It's something that's going to take
13 some time to resolve.

14 So if the state closes next Friday, we'll
15 have the brief prepared. And we appreciate the
16 time Tuesday to argue it.

17 So what I understand, the state's
18 proposal is we'd file on Friday, we would respond
19 by Monday, and we'd have the entire day that
20 Tuesday to argue and discuss the motion.

21 MR. LI: Your Honor, the one modification to
22 that is we'd ask that the -- we had hoped the
23 state's brief would be filed simultaneously. But
24 there is no surprises in this case. We've all been
25 in the same courtroom for the last three months.

1 We know what the issues are. They've seen our
2 briefing on the legal issues. We understand that
3 they might want to -- they've asked for time to
4 respond.

5 We'd ask that their brief be filed
6 earlier so we at least have some time to review it.
7 And if they're making cites to various portions of
8 the record that we're not looking at and it's
9 11:00 o'clock at night or whatever, to try to track
10 down all of their -- whatever arguments they want
11 to make, including case law. So we'd ask if they
12 want to have some sort of staggered briefing
13 schedule, that they provide their brief Monday
14 morning.

15 THE COURT: And when did you suggest,
16 Ms. Polk?

17 MS. POLK: Monday by 5:00, Your Honor.

18 MR. LI: And the only reason is if we're going
19 to argue it Tuesday.

20 THE COURT: Certainly understand. It's an
21 unusual procedure. I think early in the afternoon,
22 say, 2:00 o'clock in the afternoon. Provide it by
23 then, Ms. Polk.

24 MS. POLK: We will, Your Honor.

25 THE COURT: And then I'll adopt that schedule.

1 I'll just say right now to the attorneys, that's
2 the schedule. The trial -- the state's case will
3 be completed on Friday. That means I have to look
4 closely at Wednesday. If I have to set time
5 limits, I'm going to do that.

6 Okay?

7 Anything else, Ms. Polk?

8 MS. POLK: No, Your Honor. Thank you.

9 THE COURT: Counsel?

10 MR. KELLY: No, Judge.

11 THE COURT: Okay. Thank you. We'll be in
12 recess.

13 (The proceedings concluded.)
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1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss- REPORTER'S CERTIFICATE
3

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 2nd day of June, 2011.
18
19
20
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22

23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

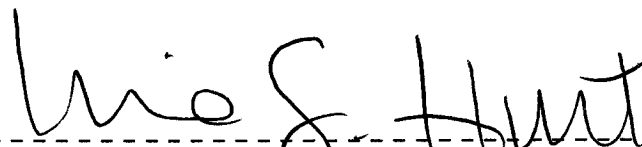
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MINA G. HUNT, AZ CR No. 50619
CA CSR No. 8335